



MISSOURI ATTORNEY GENERAL'S OFFICE

KIM GARDNER REPORT

Missouri Attorney General's Office Kim Gardner Report

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EXECUTIVE SUMMARY

Today, we begin the process of restoring public safety to the City of Saint Louis.

-Attorney General Andrew Bailey

Kimberly M. Gardner was elected to the Office of St. Louis Circuit Attorney in 2016, and she assumed office on January 1, 2017. She completed her first term and was again elected in 2020. She began her second term on January 1, 2021, and, as required by state law, she swore “to support the Constitution of the United States and the Constitution of Missouri, and to faithfully demean [herself] in office.”¹ One of her foremost duties was “to devote [her] entire time and energy to the discharge of [her] official duties[.]”² However, Ms. Gardner failed to abide by her oath and fulfill her duties.

During her time as Circuit Attorney, Ms. Gardner adopted policies that transformed her office into a “rudderless ship of chaos”³ and brought the criminal

merly formidable office became a mere shadow of itself, as many experienced attorneys were forced out or fled its confines and the prosecution of criminal cases fell by the wayside.

As the damaging effects of Ms. Gardner’s dereliction of her duties grew, media reports about the degenerating state of the criminal justice system in the city proliferated. Then, on February 18, 2023, a

During her time as Circuit Attorney, Ms. Gardner adopted policies that transformed her office into a “rudderless ship of chaos” and brought the criminal justice system in the City of St. Louis to the brink of collapse.

When Ms. Gardner was elected in 2016, the Circuit Attorney’s Office was trying more jury trials each year than any other prosecutor’s office in the state. But under Ms. Gardner’s watch, the formerly formidable office became a mere shadow of itself.

justice system in the City of St. Louis to the brink of collapse. When Ms. Gardner was elected in 2016, the Circuit Attorney’s Office was trying more jury trials each year than any other prosecutor’s office in the state. But under Ms. Gardner’s watch, the for-

terrible tragedy shined a light on Ms. Gardner’s failures as the Circuit Attorney when a vehicle struck and nearly killed Janae Edmonson, a talented and aspiring seventeen-year-old athlete, who was visiting the City of St. Louis. The driver of the vehicle, Daniel Riley, was free on bond—with Ms. Gardner’s consent, and after her office had failed to prosecute his criminal case—notwithstanding dozens of reported violations of the conditions of his bond. Ms. Edmonson lost both of her legs, irrevocably altering the course of her life.

¹§ 56.550, RSMo. 2016.

²§ 56.445, RSMo. 2016.

³Order entered on April 27, 2023, in *State v.*

Vincent, 2122-CR00600-01 (St. Louis City Cir. Ct.) (“The Circuit Attorney’s Office appears to be a rudderless ship of chaos.”).

Standing alone, the horrible incident that took Ms. Edmonson's legs was a profound tragedy. But it was also just the tip of the iceberg. Ms. Gardner's repeated failures to abide by her oath of office had severely undermined the criminal justice system, ruining countless lives. Ms. Edmonson's loss served as a catalyst that would change St. Louis history.

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On February 22, 2023, Attorney General Andrew Bailey demanded that Ms. Gardner resign. He advised her that if she did not step down by noon the following day, then he would take appropriate legal action to have her removed from office. Ms. Gardner refused.

As promised, on February 23, 2023, at 12:01 PM, Attorney General Bailey filed a Petition in Quo Warranto, asserting that Ms. Gardner had forfeited her office under state law.⁴

The petition alleged in three counts that Ms.

Gardner had (1) failed to prosecute criminal cases, (2) failed to inform and confer with victims, and (3) refused to exercise her judgment to determine whether to file charges that had been presented to her. A team of attorneys and investigators from the Missouri Attorney General's Office immediately commenced a thorough and extensive investigation.

After reviewing tens of thousands of documents and interviewing dozens of witnesses, the Attorney General filed a 120-page Amended Petition in Quo Warranto.

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⁴§ 106.220, RSMo. 2016.

THE QUO WARRANTO

THE AMENDED PETITION ALLEGED TEN COUNTS:

I. Failing to prosecute criminal cases;

II. Failing to review and charge cases submitted by law enforcement;

III. Failing to review reports of officer-involved shootings;

IV. Failing to comply with discovery obligations;

V. Failing to timely dispose of evidence in criminal cases, creating a danger to law enforcement personnel left “drowning in drugs” seized from crime scenes;

VI. Failing to hire, train, and supervise her

staff to carry out the work of her office;

VII. Failing to comply with public records requests under the Missouri Sunshine Law;

VIII. Mismanaging her office finances and burdening the city with hundreds of thousands of dollars in legal fees;

IX. Violating the constitutional rights of victims by failing to inform and confer with them about pending cases; and

X. Failing to timely dispose of criminal cases, violating the rights of victims and defendants alike.

Instead of accepting responsibility for her failures, Ms. Gardner attempted to pass the buck by blaming everyone else for her failures in office. She blamed state leaders, the courts, local law enforcement, uncooperative witnesses and victims, the media, and her own assistant circuit attorneys. She retained a team of attorneys for herself and a team of attorneys for her office, and refused to cooperate. **Rather than permit review of any records that might have shed light on her conduct in office, she resisted every request for discovery and attempted to conceal her failures.**

In May 2023, as part of the ongoing investigation into Ms. Gardner's conduct while in office, Attorney General Bailey discovered that Ms. Gardner was taking nursing classes while simultaneously holding the office of Circuit Attorney. He immediately sought discovery of records from the St. Louis University School of Nursing where Ms. Gardner was pursuing an advanced nursing degree and a clinic where she was performing clinical work. Ms. Gardner again resisted discovery, asserting that the records were irrelevant to the quo warranto pro-

ceedings. But it was evident that the records would demonstrate that, contrary to the requirements explicitly laid out in § 56.445, RSMo, she had not been devoting her “entire time and energy” to her official duties.

A hearing on the discovery dispute was scheduled for May 16, 2023, and it appeared likely that the Court would order the production of the records from the nursing school and the clinic. **However, just two hours before the hearing, Ms. Gardner abruptly resigned from office. As a result, she avoided the production of the records, she avoided her scheduled video deposition on May 18, and she never handed over a single page of discovery.**

In the wake of Ms. Gardner's resignation, Governor Michael L. Parson appointed an interim circuit attorney and requested that Attorney General Bailey assist the Circuit Attorney's Office in fulfilling the circuit attorney's various duties. It was then that Attorney General Bailey declared, **“Today, we begin the process of restoring public safety to the City of St. Louis.”**

OBSERVATIONS AND RECOMMENDATIONS

Following the Attorney General's extensive investigation and litigation of the Amended Petition in Quo Warranto, the Attorney General makes several observations and recommendations.

A. Ms. Gardner's delay tactics threatened to defeat the purpose of the writ and left many unanswered questions.

By its very nature, a petition in quo warranto should be resolved with some degree of urgency. A term of office has a definite end, and an office holder should not be able to retain a forfeited office through the artifice of delay. Moreover, as our courts have recognized, the purpose of proceedings in quo warranto is to "protect[] the public against usurpers."⁵ The need for protecting the public is particularly important when dealing with a prosecutor. If a prosecutor is not a usurper, he or she should be permitted to return to his or her duties as quickly as possible for the sake of public safety; but if a prosecutor is a usurper, he or she should not hold that office even one day longer than is necessary to resolve the quo warranto proceedings.

B. Our statutes do not protect the public against usurpers who may seek public office again in the future.

The outcome of the quo proceedings was satisfactory because Ms. Gardner was forced to resign from the office that she had forfeited through the willful neglect of her duties. However, there is nothing in our statutes that would prevent Ms. Gardner from seeking, and obtaining, the office of Circuit Attorney again in the future.

C. Ms. Gardner's pursuit of an advanced nursing degree while holding the office of Circuit Attorney demonstrated a lack of accountability under the law.

Ms. Gardner took an oath "to faithfully demean [herself] in office,"⁶ and it should have gone without saying that she would fulfil the basic duty of devoting her time and energy to the work of her office. The people deserve that much, and the General Assembly could amend § 56.445 to require the Circuit Attorney to attest, under penalty of perjury, that the Circuit Attorney will comply with the provisions of § 56.445.

⁵*State ex inf. Peach ex rel. Stitz v. Perry*, 643 SW.2d 878, 880 (Mo. App. E.D. 1982).

⁶§ 56.550, RSMo. 2016.

⁷Akhi Johnson & Stephen Roberts, *Reshaping Prosecution in St. Louis: Lessons from the Field*. New York: Vera Institute of Justice, 2020.

D. The Office of the Circuit Attorney is a law enforcement agency first, and it must be primarily concerned with preserving public safety.

Ms. Gardner's partnership with the Vera Institute, with the aim of "actively shrinking the criminal legal system's footprint,"⁷ was a disastrous experiment, and it unmoored the office from sound law enforcement practices. The Vera Institute is a far-left advocacy organization dedicated to broad and nebulous goals such as moving away from "case-by-case" prosecutorial discretion (deemed to be a "narrow view of justice"), choosing instead to focus on "systemic impact of case decisions."⁸

E. Ms. Gardner failed to effectively manage staffing in her office and she failed to provide adequate training for her staff.

A significant problem that only exacerbated the staffing issues was Ms. Gardner's failure to provide adequate oversight and training for her staff. As the Circuit Attorney, Ms. Gardner had a duty to "ensure that subordinate lawyers comply with all their legal and ethical obligations."¹¹

F. Section 595.209 does not extend victim's rights to post-conviction relief proceedings.

The Victim's Rights Act requires notice of "the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case."⁹ The Act also provides the right to notice—by the Attorney General—of "case status information throughout the appellate process of their cases."¹⁰ But the Act is silent as to post-conviction relief proceedings. Given the potential harm to victims when they are not kept informed of important events related to their cases, the General Assembly should address this issue by amending the Victim's Rights Act to extend victim's rights to post-conviction relief proceedings.

⁸*Id.*

⁹§ 595.209.1(3), RSMo. (2016).

¹⁰§ 595.209.1(16), RSMo. (2016).

¹¹ABA Comm. Ethics & Prof'l Responsibility, Formal Op. 09-454.

HISTORY OF THE QUO WARRANTO



Quo Warranto is “the bolt forged by the law”
that “no other hand may” wield.

—*State ex rel. Black v. Taylor*, 106 S.W. 1023, 1026 (Mo. Div. 1 1907)



A. What is Quo Warranto?

In certain extraordinary circumstances, the law provides for the issuance of extraordinary writs, including the writ of quo warranto. Quo Warranto is Latin for “by what authority” and a writ of quo warranto is “a writ commanding the defendant to show by what warrant he exercises such a franchise [or public office], having never had any grant of it, or having forfeited it by neglect or abuse.”¹¹ The General Assembly has authorized the Missouri Attorney General to file a petition in quo warranto against certain office holders who usurp or unlawfully hold office.¹² In this way, a quo warranto action is “an action to

protect the public”¹³

Certain officeholders may forfeit their office for violating or neglecting their official duties. Section 106.220 provides:

Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act

or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office

A writ of quo warranto is issued in response to an exercise of the State’s power. “ ‘At common law quo warranto proceedings, being for the purpose of inquiring into matters which concern a public right or of redressing a public wrong, must be in the name of the sovereign.’ ”¹⁵ Missouri law provides for petitions to be filed by the attorney general or by a local prosecutor, and “they wield the bolt forged by the law. No other hand may.”¹⁶

¹²Black’s Law Dictionary, p. 1256 (6th ed. 1990).

¹³§ 531.010, RSMo. 2016.

¹⁴*State ex inf. Peach v. Goins*, 575 S.W.2d 175, 183 (Mo. 1978).

¹⁵*State ex rel. Black v. Taylor*, 106 S.W.1023, 1026 (Mo. 1907).

¹⁶*Id.*

B. Quo Warranto in Missouri History.

A writ of quo warranto is “of ancient origin.”¹⁷ At common law, and before the founding of the United States, the writ of quo warranto allowed for those usurping an “office, right or privilege granted by the Crown” to be ousted from office.¹⁸ After the founding of the United States and the admission of Missouri into the Union, Missouri law recognized the writ of quo warranto. The Missouri Attorney General is the state’s chief legal officer.¹⁹ As the chief legal officer, Missouri common law and statutes authorize the Attorney General to bring quo warranto

actions to ensure that state office is not held by usurpers.

For nearly two hundred years in Missouri, the writ of quo warranto has served as a vehicle to challenge a person’s title to office. For instance, in 1858, in *State ex rel. Brison v. Lingo*, a quo warranto petition was brought to settle a dispute over who was the proper superintendent of the St. Louis City Workhouse.²⁰ Following the civil war, the Attorney General brought quo warranto actions to remove those who had been disloyal to the United States and those who had “fail[ed] to take and subscribe the oath of loyalty” required by the State constitution.²¹

By the turn of the twentieth century, the Attorney General was bringing quo warranto actions against corporations that had violated their charters with the state government and against those who had usurped a state office.²² In the mid-century, the Attorney General had begun to bring quo warranto actions against those who, through graft and political corruption, had usurped their offices.²³ By the mid-seventies, the Attorney General brought quo warranto actions against those who had abandoned their duties, and therefore, had vacated their offices.²⁴

¹⁷*State ex inf. Peach v. Goins*, 575 S.W.2d 175, 183 (Mo. 1978).

¹⁸*Id.*

¹⁹*State v. Todd*, 433 S.W.2d 550, 554 (Mo. Div. 2 1968).

²⁰*State ex rel. Brison v. Lingo*, 26 Mo. 496 (1858).

²¹*State ex rel. Wingate v. Woodson*, 41 Mo. 227 (1867).

²²See, e.g., *State ex inf. Gentry v. American Can Co.*, 4 S.W.2d 448 (Mo. banc 1928) (judgment of ouster against corporation affirmed); *State on inf. of Baker, Attorney*

General v. Koeln, 192 S.W. 748, 754 (Mo. banc 1917) (judgment of ouster against collector of revenue for the City of St. Louis affirmed).

²³*State ex inf. McKittrick v. Graves*, 144 S.W.2d 91 (Mo. 1940); *State ex inf. McKittrick v. Wymore*, 345 Mo. 169 (1939).

²⁴See, e.g., *State ex inf. Danforth v. Orton*, 465 S.W.2d 618, 626–27 (Mo. banc 1971).

C. Quo Warranto in the Modern era.

In the modern era, the Attorney General has brought quo warranto actions against those who have totally failed to satisfy the duties of their office or those who have committed criminal offenses while in office. For instance, in *State of Missouri ex inf. Chris Koster, Attorney General of the State of Missouri v. Jessica Sparks*, the Attorney General's Office (AGO) filed an eight-page petition for writ of quo warranto against the Dent County

Prosecuting Attorney alleging that the prosecutor had totally failed to file criminal charges in more than two hundred cases.²⁵ The Dent County Circuit Court issued a summons two months later, directing the prosecutor to respond.²⁶ The day the prosecutor's answer was due, the prosecutor filed her resignation with the court.²⁷

Likewise, in *State of Missouri ex inf. Joshua Hawley, Attorney General v. Cory Hutcheson*, the Missouri Attorney General filed a petition for quo warranto against a sheriff, alleging misfeasance

and malfeasance in office, including the commission of criminal acts.²⁸ Ultimately, that case was dismissed because the Attorney General's Office "secured Respondent Hutcheson's resignation from office"²⁹

As these cases demonstrate, quo warranto proceedings filed by the Attorney General, at least in the modern era, have not often resulted in a court order of removal. Instead, they have typically resulted in the elected official's resignation from the office.

²⁵*State of Missouri ex inf. Chris Koster, Attorney General of the State of Missouri v. Jessica Sparks*, 09DE-CC00021 (Dent. Cnty. Cir. Ct. Apr. 9, 2009).

²⁶*Id.*

²⁷*Id.*

²⁸*State of Missouri ex inf. Joshua Hawley, Attorney General v. Cory Hutcheson*, 17MI-CV00263 (Miss. Cnty. Cir. Ct. May 9, 2017).

²⁹*Id.*

RELEVANT STATUTES

The duties specific to the St. Louis City Circuit Attorney are set forth in Chapter 56 of the Revised Statutes of Missouri.³⁰ Those duties include, but are not limited to, the following:

Section 56.445: It shall be the duty of the circuit attorney of the City of St. Louis and of his assistants and associates to devote their entire time and energy to the discharge of their official duties

Section 56.450: The circuit attorney of the City of St. Louis shall manage and conduct all criminal cases, business and proceedings of which the circuit court of the city of St. Louis shall have jurisdiction.

Section 56.460: It shall be the duty of the circuit attorney of the City of St. Louis, in person or by assistants, to hear complaints in felony and misdemeanor cases and to file information in such cases with the clerk of the circuit court of the City of St. Louis and to prosecute the same in said court; and it shall be the duty of the circuit attorney, or such assistants as he may designate, to attend at his office on each day of the week, except Sunday and national and state holidays, at all reasonable hours, for the purpose of preparing all complaints, affidavits and informations in such cases required by law to be lodged in said court.

Section 56.470: It shall be the duty of the chief of police of the City of St. Louis, within twenty hours after the arrest by the police of any person for felony or misdemeanor under the laws of this state, to report to the circuit attorney the name of the person so arrested and the name of the prosecuting witness and of any other material witnesses known to the police, and said circuit attorney or his assistants shall thereupon proceed to institute such prosecution as is required by law if, in the judgment of such circuit attorney, the evidence presented to him is sufficient to justify a prosecution.

Section 56.540: The circuit attorney of such circuit may appoint one first assistant circuit attorney, one chief trial assistant, one warrant officer, one chief misdemeanor assistant and such additional assistant circuit attorneys as the circuit attorney deems necessary for the proper administration of his office.

Section 56.550: Before entering upon the duties of their office, the circuit attorney and said assistants shall be severally sworn to support the Constitution of the United States and the Constitution of Missouri, and to faithfully demean themselves in office. The duties of said assistants shall be to assist the circuit attorney generally in the conduct of his office, under his direction and subject to his control; and said circuit attorney and his assistants shall institute and prosecute all criminal actions in the circuit court. The circuit attorney and said assistant circuit attorneys, when so directed by the circuit attorney, may attend upon the grand jury.

³⁰§ 56.380, RSMo. 2016, et seq.

RELEVANT STATUTES

The Circuit Attorney has additional duties pursuant to Article I, section 32, of the Missouri Constitution. Those duties have been codified in § 595.209, RSMo. 2016, and they include, but are not limited to, the following:

- **For victims and witnesses**, to be informed, in a timely manner, by the prosecutor's office of the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case. Final disposition information shall be provided within five days;
- **For victims**, the right to confer with and to be informed by the prosecutor regarding bail hearings, guilty pleas, pleas under chapter 552 or its successors, hearings, sentencing and probation revocation hearings and the right to be heard at such hearings, including juvenile proceedings, unless in the determination of the court the interests of justice require otherwise;
- **For witnesses** who have been summoned by the prosecuting attorney **and for victims**, to be notified by the prosecuting attorney in a timely manner when a court proceeding will not go on as scheduled;
- **For victims and witnesses**, on charged cases or submitted cases where no charge decision has yet been made, to be informed by the prosecuting attorney of the status of the case and of the availability of victim compensation assistance and of financial assistance and emergency and crisis intervention services available within the community and information relative to applying for such assistance or services, and of any final decision by the prosecuting attorney not to file charges;
- **For victims and witnesses**, the right to speedy disposition of their cases, and for victims, the right to speedy appellate review of their cases, provided that nothing in this subdivision shall prevent the defendant from having sufficient time to prepare such defendant's defense.

The Attorney General is Authorized to seek removal of an office holder quo warranto:

These rights "are absolute and the policy of this state is that the victim's rights are paramount to the defendant's rights."³¹

An elected official like the Circuit Attorney can forfeit his or her office as set forth in § 106.220. That section provides:

Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office

When such a forfeiture has occurred, the Attorney General is authorized by § 531.010, RSMo. 2016, file a petition in quo warranto.

In case any person shall usurp, intrude into or unlawfully hold or execute any office or franchise, the attorney general of the state, or any circuit or prosecuting attorney of the county in which the action is commenced, shall exhibit to the circuit court, or other court having concurrent jurisdiction therewith in civil cases, an information in the nature of a quo warranto

³¹§ 595.209.5, RSMo. 2016.

TURMOIL IN SAINT LOUIS

CRACKS IN THE FOUNDATION: **GARDNER'S 1ST TERM**

On January 1, 2017, Ms. Gardner assumed the office of St. Louis City Circuit Attorney and began her first term in office. At that time, the Circuit Attorney's Office was trying more jury trials each year than any other prosecutor's office in the state. But troubling signs of the impending mismanagement of the Circuit Attorney's Office soon surfaced.

In 2018, the Missouri Ethics Commission conducted an investigation and audit into Ms. Gardner's election activities.³² Ultimately, Ms. Gardner and the Ethics Commission entered into an agreement, and the Ethics Commission assessed a fee of \$63,009. Ms. Gardner paid the requisite portion of the fee. Notwithstanding the fact that auditors had found irregularities, Ms. Gardner attempted to suggest that the audit was politically motivated, stating that it was "initiated after a campaign finance complaint was made by a Republican political operative during the former Governor Greitens' criminal investigation earlier this year."³³

In August 2018, Ms. Gardner stopped accepting criminal cases from 28 city police officers, asserting that they had "credibility issues," and she began reviewing any open cases that they had handled for "viability."³⁴ Ms. Gardner maintained a list of officers that grew over time, and those officers

were effectively banned from the warrant office and were unable to present cases to the Circuit Attorney's Office.

In January 2019, a former FBI agent, William Tisaby, whom Ms. Gardner had hired to investigate former Governor Greitens, was charged with seven felonies related to his investigation, including perjury and tampering with evidence.³⁵ The charges alleged that Mr. Tisaby had concealed documents and information, including notes that Mr. Tisaby and Ms. Gardner had taken during witness interviews. Mr. Tisaby eventually pleaded guilty to

tampering with evidence.³⁶ For her part, Ms. Gardner was reprimanded by the Missouri Supreme Court for failing to disclose evidence and for failing to correct misstatements that her investigator made under oath.^{37,38}

In December 2019, Judge Elizabeth Hogan dismissed charges that the Circuit Attorney's Office had filed against two police officers accused of shooting a man.³⁹ Judge Hogan stated that Ms. Gardner's assistants had "willfully"

withheld evidence from the officers' attorneys, and Judge Hogan further observed that Ms. Gardner's office had a "pattern" of failing to turn over evidence in many cases. Judge Hogan explained that, in the first six months of the year, the court had heard 331 motions in which attorneys alleged that the Circuit Attorney's Office had failed to comply with discovery rules.

“
Judge Hogan stated that Ms. Gardner's assistants had “willfully” withheld evidence from the officers' attorneys, and Judge Hogan further observed that Ms. Gardner's office had a “pattern” of failing to turn over evidence in many cases.”

³²*Missouri Ethics Commission v. Citizens to Elect Kimberly Gardner, et al.*, No. 18-0006-A, 18-016-1 (consent agreement filed January 2, 2019).

³³Sam Clancy, St. Louis Circuit Attorney Kim Gardner pays fine after campaign finance investigation, <https://www.ksdk.com/article/news/politics/st-louis-circuit-attorney-kim-gardner-pays-fine-after-campaign-finance-investigation/63-05eb590d-6334-4bf5-93f4-7cf44a59be1a>

³⁴Christine Byers and Joel Currier, St. Louis prosecutor says she will no longer accept cases from 28 city police officers, https://www.stltoday.com/news/local/crime-and-courts/st-louis-prosecutor-says-she-will-no-longer-accept-cases/article_6d8d-ef16-d08d-5e9a-80ba-f5f5446b7b6a.html

³⁵Christine Byers, Everything we know about Kim Gardner's tenure, <https://www.ksdk.com/>

[article/news/local/kim-gardners-tenure-police-department-eric-greitens/63-7644a9a0-ed93-43b7-8e34-b2319e6c3271](https://www.ksdk.com/article/news/local/kim-gardners-tenure-police-department-eric-greitens/63-7644a9a0-ed93-43b7-8e34-b2319e6c3271)

³⁶Jim Salter, Greitens investigator pleads guilty to evidence tampering <https://www.kshb.com/news/local-news/greitens-investigator-pleads-guilty-to-evidence-tampering>

³⁷Kacen Bayless, Missouri Supreme Court reprimands St. Louis prosecutor over handling of 2018 Greitens case, <https://www.kansascity.com/news/politics-government/article265089594.html>

³⁸Order, In re: Kimberly M. Gardner, SC99645 (Aug. 30, 2022).

³⁹Sara Machi & Christine Byers, St. Louis judge tosses case against officers who shot man outside of bar, citing video evidence, <https://www.ksdk.com/article/news/local/st-louis-officers-shoot-man-outside-bar-charges-dropped/63-b87cc9c9-3074-48f8-b7b7-d2d8f11a7b25>

DROWNING IN DYSFUNCTION: **GARDNER'S 2ND TERM**

In January 2020, Ms. Gardner's chief trial assistant resigned.⁴⁰ She was the fourth chief trial assistant to resign during Ms. Gardner's first term in office. At that time, more than 65 attorneys had resigned or been fired during Ms. Gardner's tenure. Reportedly, "[b]etween 2017 and 2019, staff turnover in her office was more than 100 percent, the equivalent of losing 470 years of collective experience."⁴¹

During Ms. Gardner's second term, which commenced in 2021, the problems that had begun to manifest in her first term only worsened. In September 2021, the St. Louis Post-Dispatch reported that "[n]ine months into Circuit Attorney Kimberly M. Gardner's second term, a decimated team of prosecutors is desperately understaffed and, some say, drowning in dysfunction."⁴² The report highlighted the lack of attorney resources within the office, stating: "Gardner now employs just over 30 attorneys with 150 years of combined tenure in the office. Five years ago, more than 60 prosecutors had worked for the circuit attorney for a cumulative 500 years."⁴³ The re-

ported reasons that attorneys gave for leaving the office included that Ms. Gardner "lacked leadership ability, management skills and had 'no coherent vision' for the office," that "workload became unsustainable," and that "there was a 'huge amount of distrust' between Gardner and her staff."⁴⁴

In April 2021, Ms. Gardner announced that she was partnering with the Vera Institute of Justice as

part of their ongoing "Reshaping Prosecution" campaign.⁴⁵ The stated aim of that effort was "to reduce racial disparities in the city's criminal legal system by at least 20% through data-driven diversion efforts and policy changes."⁴⁶

Ms. Gardner's partnership with the Vera Institute was not new, however, as she had previously partnered with the institute in 2017, shortly after she first took office.⁴⁷ At that time, Ms. Gardner entered into a "pilot partnership" with the Vera Institute to launch the "Reshaping Prosecution" program.⁴⁸ Remarkably, Ms. Gardner gave the institute access to her office's Prosecutor by Karpel (PbK) database and "transferred data stored in PbK to Vera for

In September 2021, the St. Louis Post-Dispatch reported that "[n]ine months into Circuit Attorney Kimberly M. Gardner's second term, a decimated team of prosecutors is desperately understaffed and, some say, drowning in dysfunction."

'Kim Gardner is a poor excuse for a prosecutor': Family of murder victim outraged after charges dropped, suspect freed

Gardner's office says it has re-filed charges against Brandon Campbell



off-site review."⁴⁹

After conducting its review, the institute "devel-

⁴⁰Christine Byers, Everything we know about Kim Gardner's tenure, <https://www.ksdk.com/article/news/local/kim-gardners-tenure-police-department-eric-greitens/63-7644a9a0-ed93-43b7-8e34-b2319e6c3271>

⁴¹Jordan Duecker, An Irredeemable Legacy, <https://www.city-journal.org/article/kimberly-gardners-irredeemable-legacy>

⁴²Janelle O'Dea & Joel Currier,

9 months into second term, St. Louis prosecutor can't keep attorneys on staff, https://www.stltoday.com/%20news/local/crime-and-courts/the-onslaught-is-coming-st-louis-prosecutor-s-office-cant-keep-attorneys-on-staff/article_a9b8b33a-a3c3-5a88-bc1e-7123f8b8aa85.html

⁴³*Id.*

⁴⁴*Id.*

⁴⁵Dana Rieck, Gardner partners with Vera Institute to reduce racial disparities in legal system, https://www.stlamerican.com/business/business_news/gardner-partners-with-vera-institute-to-reduce-racial-disparities-in-legal-system/article_b9e54fc4-98a8-11eb-b0a5-8bb4ab88394f.html

⁴⁶*Id.*

⁴⁷Akhi Johnson and Stephen

Roberts, Reshaping Prosecution in St. Louis: Lessons from the Field. New York: Vera Institute of Justice, 2020. A copy of this publication was included as Exhibit 27 to the Amended Petition in Quo Warranto.

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹*Id.*

oped policy recommendations” that were designed to “actively shrink the criminal legal system’s footprint.”⁵⁰ The institute then “trained the office’s line prosecutors on the recommended reforms and the data informing them.”⁵¹

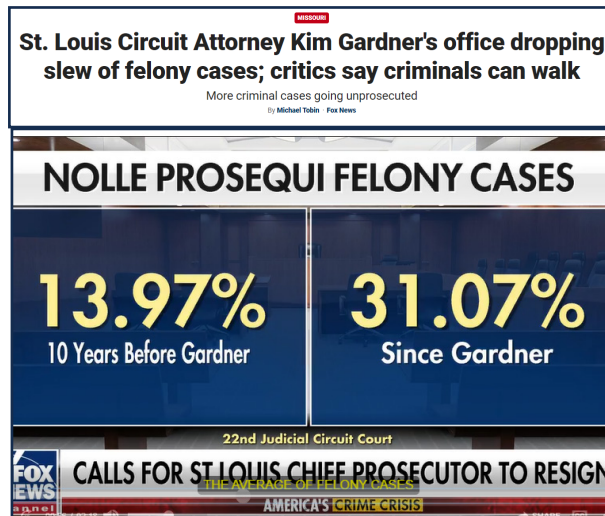
However, before providing that training, Ms. Gardner and the institute “recognized the importance of providing information on the negative impacts of mass incarceration to contextualize why new approaches are necessary.”⁵² Accordingly, “Vera developed a two-hour multimedia training to make a simple, but essential argument: mass incarceration is a problem, and prosecutors have the power to change it.”⁵³

Against the backdrop of the “Reshaping Prosecution” program, and as more and more experienced prosecutors left the office, the prosecution of criminal cases by the Circuit Attorney’s Office fell by the wayside, and the number of felony cases filed in the city dropped precipitously. In 2013, the Circuit Attorney’s Office had filed 9,129 total cases, 3,334 of which were felonies.⁵⁴ But in 2022, the office filed only 3,123 total cases, 1,194 of which were felonies.⁵⁵

Moreover, the number of felony cases being dismissed by the office was reportedly much higher than historical levels. In the first half of 2021, it was reported that 34.4% of all felony cases in the City of St. Louis were dismissed by Ms. Gardner’s office.⁵⁶ In the nine years before Ms. Gardner took office in 2017, the percentage of felony cases that were dismissed averaged 13.5%, with the highest percentage of 15.5% occurring in 2015.

Ms. Gardner also fell into a pattern of failing to review new cases that had been submitted to her office by the police. At the end of 2022, the St. Louis Metropolitan Police Department had reportedly submitted more than 4,000 cases that Ms. Gardner had failed to review for charges.⁵⁷ In one such case, the police referred charges on a case where a family was terrorized in their home by a woman who was attempting to break in.⁵⁸ According to news reports, Ms. Gardner

failed to review the case until the victims gained notoriety on TikTok by posting video footage of the crime.⁵⁹



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⁵²*Id.*

⁵³*Id.*

⁵⁴Data from the Office of State Courts Administration

⁵⁵Data from the Office of State Courts Administration

⁵⁶Michael Tobin, St. Louis Circuit Attorney Kim Gardner’s office dropping slew of felony cases; critics say criminals can walk, <https://www.foxnews.com/us/st-louis-circuit-attorney-kim-gardners-office-dropping-felony-cases-critics-criminals>

⁵⁷Christine Byers, Bryer’s Beat: An inside look at thousands of cases going nowhere in St. Louis, <https://www.ksdk.com/article/news/local/byers-beat-inside-look-thousands-of-cases-going-nowhere-st-louis/63-e86e5af1-b9c4-48fe-afde-2e5eaa7b5030>

⁵⁸Associated Press, Judge issues order of protection against woman after video showed her harassing south St. Louis family, <https://www.ksdk.com/article/news/crime/woman-arrested-video-showed-harassing-south-st-louis-family/63-c0709249-0f03-4c1b-9248-a0001c2cc66c>

⁵⁹*Id.*

JUDGES TAKE NOTICE: **GARDNER'S PATTERN OF FAILURE**

The Circuit Attorney's Office's pattern of failing to prosecute cases was showcased in the high-profile case of *State v. Campbell*, 2022-CR02036-01 (St. Louis City Ct.). In that case, in February 2021, the defendant was indicted and charged with various offenses, including a charge of murder in the first degree.⁶⁰

On April 20, 2021, defense counsel filed a request for discovery—a request that Ms. Gardner's office was obligated to fulfil. An assistant circuit attorney provided some items of discovery on April 23, 2021, before he stopped working at the Circuit Attorney's Office.

On May 17, 2021, after the Circuit Attorney's Office failed to further respond to the request, defense counsel filed a motion to compel discovery or for sanctions. On that same day, another assistant circuit attorney was entered on the case; however, that assistant circuit attorney was actually on maternity leave, and she was not expected to return to work for about three months. Reportedly, the entry of appearance was filed by someone else at the Circuit Attorney's office, and the assistant circuit attorney whose name was on the entry did not sign the entry.⁶¹

Defense counsel noticed up her motion to

compel discovery for May 27, 2021. On that date, Defense counsel appeared to argue the motion, but no one from the Circuit Attorney's Office appeared.⁶²

On June 6, 2021, the Court scheduled a second hearing on the motion to compel discovery, ordering the parties to appear on June 15, 2021. In its order, the court noted that it was setting a second hearing and that no one from the Circuit Attorney's Office had appeared at the first hearing.⁶³ Accordingly, the court ordered, "a representative from the Circuit Attorney's Office is ordered to appear and to be prepared to respond

to Defendant's motion."⁶⁴ The court warned that "[i]f no one appears, the allegations in the motion will be deemed admitted and the motion will be granted."⁶⁵

On June 15, 2021, no one from the Circuit Attorney's Office appeared. The court then entered an order stating that defense counsel had appeared but that "[n]o representative from the Circuit Attorney's Office appeared."⁶⁶ The court granted the defendant's motion to compel discovery and the court ordered, "The State, by Circuit Attorney Kimberly Gardner, is hereby ordered to produce all materials requested in the Defendant's supplemental motion for discovery and Defendant's motion to compel discovery."⁶⁷ The court ordered disclosure by June 23, 2021, but the Circuit Attorney failed to turn over the ordered discovery.



⁶⁰Joel Currier, No-show St. Louis prosecutors trigger dismissal of 2020 murder case, https://www.stltoday.com/news/local/crime-and-courts/no-show-st-louis-prosecutors-trigger-dismissal-of-2020-murder-case/article_6be57257-6f1a-5640-a40e-57436c0d3789.html
⁶¹Christine Byers & Erin Richey, St Louis' lead homicide prosecutor quits after signature entered on cases while she was on maternity leave, <https://www.ksdk.com/article/news/local/st-louis-lead-homicide-prosecutor-quits-signature-cases-maternity-leave/63-d2e8ec1c->

852b-4bbc-be4d-d0228ecde16f

⁶²Order, *State v. Campbell*, 2022-CR02036-01 (St. Louis City Cir. Ct. June 15, 2021).

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷Order, *State v. Campbell*, 2022-CR02036-01 (St. Louis City Cir. Ct. July 6, 2021).

On June 30, 2021, defense counsel filed a motion to dismiss the case for willful violations of the rules of discovery. On July 6, 2021, the court entered an order to show cause why the case should not be dismissed.⁶⁸ The court scheduled a show cause hearing for July 12, 2021,

at 1:30 PM. The court then took the extraordinary step of directing the sheriff to ensure that a copy of that order was delivered to the Circuit Attorney's Office.

On July 12, 2021, defense counsel appeared at the show cause hearing, but, again, no representative from the Circuit Attorney's Office appeared. Defense counsel argued her motion to dismiss and presented a copy of an email that she had sent to Ms. Gardner on May 28, 2021, asking whom defense counsel should contact, noting that the circuit attorney who had been assigned to the case was on maternity leave. Defense counsel stated that she had never re-

ceived a response to that email. The Court took defense coun-

sel's motion to dismiss under submission and deferred ruling on the motion until the court could confirm with the sheriff that the Circuit Attorney's Office had received proper notice of the hearing. A deputy sheriff subsequently confirmed that he had personally

verified that the order had been delivered to the Circuit Attorney's Office on July 6, 2021.⁶⁹

On July 14, 2021, the court found that it was "clear . . . that the Circuit Attorney's office received notice of the hearing⁷⁰ on the order to show cause yet they still did not have anyone present for the hearing." The court then granted defense counsel's motion to

dismiss the charges.⁷¹

In light of the seriousness of the charged offenses, the court stated that it did not "take this action without significant consideration for the implications it may have for public safety."⁷² The court observed that, while it had "a role to play in protecting public safety," its role had to be "balanced with adherence to the law and the protection of the rights of the Defendant."⁷³ The court observed that "[t]he Circuit Attorney's Office is ultimately the party responsible for protecting public safety by charging and then prosecuting those it believes commit crimes."⁷⁴ The

court then stated that because the Circuit Attorney's office had "essentially abandoned its duty to prosecute those it charges with crimes," the court was compelled to "enforce the law" and dismiss the charges.⁷⁵ The court held that "any re-

sultant threat to public safety is the responsibility of the Circuit Attorney's Office."⁷⁶

“Accordingly, the court ordered, ‘a representative from the Circuit Attorney’s Office is ordered to appear and to be prepared to respond to Defendant’s motion.’ The court warned that ‘[i]f no one appears, the allegations in the motion will be deemed admitted and the motion will be granted.’”

“The court then stated that because the Circuit Attorney’s office had ‘essentially abandoned its duty to prosecute those it charges with crimes,’ the court was compelled to ‘enforce the law’ and dismiss the charges. The court held that ‘any resultant threat to public safety is the responsibility of the Circuit Attorney’s Office.’”

⁶⁸*Id.*

⁶⁹Order, State v. Campbell, 2022-CR02036-01 (St. Louis City Cir. Ct. July 14, 2021).

⁷⁰*Id.*

⁷¹*Id.*

⁷²*Id.*

⁷³*Id.*

⁷⁴*Id.*

⁷⁵*Id.*

⁷⁶*Id.*

After the defendant's release, Ms. Gardner issued a statement and downplayed her culpability, suggesting that the dismissal had been caused by "internal policies and procedures regarding Family Medical Leave[.]"⁷⁷ Ms. Gardner ultimately acknowledged that she was "accountable to the public for the actions of the office," and she attempted to assure the people of St. Louis that there was no danger associated with the defendant's release because he was in custody.

In fact, however, the defendant was not in custody. Rather, he reportedly remained at large until July 23, 2021, when he was finally arrested by U.S. Marshals.⁷⁸ In the meantime, Ms. Gardner issued a revised statement, in which she confirmed that the defendant was not in custody, and the St. Louis police asked for the public's help in finding the defendant.⁷⁹

In sum, the events in *State v. Campbell* demonstrated an inexcusable failure to comply with the law and a persistent failure to prosecute. And,

unfortunately, they epitomized Ms. Gardner's profound and willful failures in carrying out her duties.

In conjunction with her failure to manage and prosecute cases, Ms. Gardner also failed to carry out her concomitant duties to victims of crime. After the court dismissed the charges in *State v. Campbell*, the family members of Randy Moore, the murder victim, were "outraged."⁸⁰ Family members stated that they had not "heard anything about the case from any-

one other than homicide detectives." One family member reportedly lamented, "Why are they not doing their jobs? What was so hard about picking up the phone to call us?"⁸¹ Another family member reportedly condemned the injustice, stating, "Kim Gardner is a poor excuse for a prosecutor. It's not fair."⁸²

Another family member reportedly condemned the injustice, stating, "Kim Gardner is a poor excuse for a prosecutor. It's not fair."

⁷⁷Elliott Davis, Judge drops murder charges after no show of prosecutor from St. Louis Circuit Attorney's Office, <https://fox2now.com/news/you-paid-for-it/judge-drops-murder-charges-after-no-show-of-prosecutor-from-st-louis-circuit-attorneys-office/>

⁷⁸Taylor Harris, St. Louis man whose murder case was dismissed is rearrested by US Marshalls Service, https://www.stltoday.com/%20news/local/crime-and-courts/st-louis-man-whose-murder-case-was-dismissed-is-rearrested-by-us-marshalls-service/article_26bfa36a-58ba-5edc-9c67-03e320e607db.html

⁷⁹Kayla Wheeler & Christine Byers, St. Louis police need help finding suspect in 2020 homicide who was released from custody, <https://www.ksdk.com/article/news/crime/st-louis-police-help-finding-suspect-2020-murder/63-09cfd2fd-218c-4574-8493-b76ebd5ac6e>

⁸⁰Marisa Sarnoff, St. Louis Judge Dismisses Murder Charges, Blames No-Show Prosecutor: Kim Gardner's Office 'Abandoned Its Duty' <https://lawandcrime.com/crime/st-louis-judge-dismisses-murder-charges-blames-no-show-prosecutor-kim-gardners-office-abandoned-its-duty/>

⁸¹Christine Byers, Byers' Beat: How can St. Louis Circuit Attorney Kim Gardner be held accountable?, <https://www.ksdk.com/article/news/crime/byers-beat/st-louis-circuit-attorney-kim-gardner-held-accountable/63-267fa415-8cdb-41b1-85c4-0fec6deb17fc>

⁸²Christine Byers & Erin Richey, 'Kim Gardner is a poor excuse for a prosecutor': Family of murder victim outraged after charges dropped, suspect freed, <https://www.ksdk.com/article/news/investigations/murder-charges-dropped-suspect-freed-kim-gardner/63-40aba7a5-5b36-410c-86bd-59ee93548b64>

The willful neglect of victims was a pervasive problem under Ms. Gardner's watch. The profound harm inflicted on victims by failing to confer with them and to keep them informed about their cases was keenly illustrated by the events attendant to the prosecution in *State v. Johnson*, 2022-CR00529-01 (St. Louis City Ct.). There, the defendant had been charged with the dangerous felony of murder in the second degree, based on the allegation that Mr. Johnson, "with the purpose of causing serious physical injury to Dwight Anthony Washington, caused the death of Dwight Anthony Washington[ton]."⁸³

The victim's mother, Dr. Shirley Washington-Cobb, had been in contact with the assistant circuit attorney assigned to the case; however, without Dr. Washington-Cobb's knowledge, the assistant circuit attorney negotiated a plea agreement that contemplated a guilty plea to a reduced charge of involuntary manslaughter and the imposition of an eight-year sentence. Dr. Washington-Cobb only found out about the plea agreement when she

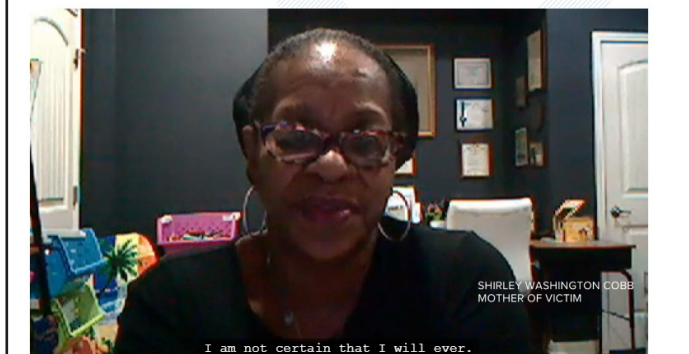
called the Circuit Attorney's office to inquire about Mr. Johnson's trial, which had been scheduled before the guilty plea.

Dr. Washington-Cobb wrote a letter to the judge and expressed her distress and anger about the plea agreement; she wrote: "As I write this request

to you, my fingers are literally shaking. Recently, I received the news that the former Assistant Prosecutor who was assigned to my son's case, grievously accepted an 8 year plea deal from the Defendant in my son's case."⁷⁴ She begged the judge to review the plea agreement and to take into consideration the harm she and her family had suffered at the hands of the defendant; she stated:

Grieving mother furious with St. Louis prosecutors for striking deal with son's killer

State law requires victims be told about developments in their cases, but Shirley Cobb said Kim Gardner's office did not tell her about a plea deal



“As I write this request to you, my fingers are literally shaking. Recently, I received the news that the former Assistant Prosecutor who was assigned to my son's case, grievously accepted an 8 year plea deal from the Defendant in my son's case.”

—Dr. Shirley Washington-Cobb

Jarmond Johnson.”⁸⁵

Dr. Washington-Cobb outlined some of the

⁸³Indictment, *State v. Johnson*, 2022-CR00529-01 (St. Louis City Cir. Ct. July 30, 2020).

⁸⁴*Id.*

⁸⁵*Id.*

circumstances of the case, and she described how she had “received ‘the call’ that every parent dreads” and learned that her son had “suffered enough brain injury” that “he would probably succumb from his injuries.”⁸⁶ She then contrasted the selfless action of her son in donating his organs upon his death with the violence of the defendant; she stated:

“Unbeknownst to me, Dwight [the victim] had previously given permission to donate his organs, should he die prematurely. In so doing, my son unselfishly saved the lives of 5 individuals! And Jarmond Johnson should receive a sentence of 8 years; which probably won’t be 8 years, for leading a life of crime, centered around assault/abuse? I’ve researched this young man. He’s violent, and seemingly devoid of sincere remorse. I’m sure that the people of St. Louis will sleep safer at night, if this miscreant is securely locked away.”⁸⁷

Dr. Washington-Cobb urged the judge “not to allow Jarmond Johnson’s unjust plea for mercy.”⁸⁸

On July 21, 2021, Dr. Washington-Cobb expressed her anger to the media and she reportedly stated that “Gardner’s office [was] trying to ‘bully’ her into accepting” the plea agreement.⁸⁹ Shortly thereafter, on July 26, 2021, the defendant pleaded guilty to the lesser offense of involuntary manslaughter in the first degree, and he was sentenced to ten years’ imprisonment.⁹⁰

“On July 21, 2021, Dr. Washington-Cobb expressed her anger to the media and she reportedly stated that “Gardner’s office [was] trying to ‘bully’ her into accepting” the plea agreement.



⁸⁶*Id.*

⁸⁷*Id.*

⁸⁸*Id.*

⁸⁹Christine Byers, Grieving mother furious with St. Louis prosecutors for sticking deal with son’s killer, <https://www.ksdk.com/article/news/investigations/grieving-mother-furious-st-louis-striking-deal-sons-killer-kim-gardner-city-attorney/63->

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⁹⁰The written judgment originally indicated that the defendant would be sentenced to eight years’ imprisonment, as had been contemplated under the reported plea agreement; however, a handwritten change was made to the judgment to reflect that he was sentenced to ten years’ imprisonment.

NEARLY DEADLY CONSEQUENCES: **GARDNER'S OFFICE DEVOLVES**

Inevitably, Ms. Gardner's willful failure to effectively prosecute her cases resulted in a terrible tragedy that could not be swept under the rug. In September 2020, in *State v. Riley*, 2022-CR01534-01 (St. Louis City Cir. Ct.), Ms. Gardner had charged Mr. Riley with the violent felonies of First Degree Robbery and Armed Criminal Action for stealing a firearm from Victim at gunpoint.⁹¹ Mr. Riley was released on house arrest, which Ms. Gardner did not oppose.⁹²

When the case came up for trial on July 18, 2022, Ms. Gardner dismissed the charges because the State "was not ready to proceed[.]"⁹³ The charges were then immediately refiled, indicating that the State nevertheless intended to try the case at some future date. This practice of dis-

Ms. Gardner issued a statement, claiming that the charges were dismissed because the robbery victim had died. However, Ms. Gardner's statement was incorrect, as the victim was, in fact, alive.

missing and refiled cases had become a common practice for the Circuit Attorney's Office, as the office was understaffed and frequently unprepared for trial.

At that time, the robbery victim's father reported that the State was not ready to go to trial because the Assistant Circuit Attorney who was assigned to the case had just returned from her honeymoon.⁹⁴ Ms. Gardner issued a statement, claiming that the charges were dismissed because the robbery victim had died.⁹⁵ However, Ms. Gardner's statement was incorrect, as the victim was, in fact, alive.⁹⁶

Both before and after the refiled of the charges, Mr. Riley incurred dozens of violations of his pre-trial bond conditions; however, Ms. Gardner did not file a motion to revoke his bond.⁹⁷ Instead, Ms. Gardner consented to his remaining free on bond while the case remained pending.⁹⁸

Thereafter, on February 18, 2023, Mr. Riley was driving in the City of St. Louis and he caused a terrible accident. Janae Edmonson, a talented seventeen-year-old athlete, was visiting St. Louis, and she was struck and nearly killed.⁹⁹ One of her legs was severed, and the other was severely maimed. Her father saved her life by using belts as makeshift tourniquets, but, ultimately, Ms. Edmonson lost both of her legs.¹⁰⁰ Her life was irrevocably altered.

⁹¹*Indictment, State v. Riley*, 2022-CR01534-01 (St. Louis City Cir. Ct. Nov. 6, 2020).

⁹²*State of Missouri v. Daniel Riley*, 2022-CR01534 (St. Louis City Cir. Ct.) (transcript of Initial Appearance Hearing, Sept. 8, 2020 at p. 3).

⁹³*Order, State v. Riley*, 2022-CR01534-01 (St. Louis City Cir. Ct. July 18, 2022).

⁹⁴Christine Byers, 'St. Louis has let you down': Father of robbery victim reacts to volleyball player's injuries after repeat bond violations go unchecked, <https://www.ksdk.com/article/news/investigations/father-robbery-victim-reacts-volleyball-players-injuries/63-b9e0a621-5990-47a1-8d58-be7199abab3d>

⁹⁵*Id.*

⁹⁶*Id.*

⁹⁷See generally *State v. Riley*, 2022-CR01534-01 (St. Louis City Cir. Ct.).

⁹⁸*State v. Riley*, 2022-CR01054 (St. Louis City Cir. Ct.) (transcript of Bond Hearing Aug. 10, 2022 at 2-3).

⁹⁹Mercedes Mackay, 'Her life has changed': Tennessee teen loses legs after being hit by a car in downtown St. Louis, <https://www.ksdk.com/article/news/local/tennessee-teen-loses-legs-hit-by-car-downtown-st-louis/63-7b54c472-37fc-4dde-864a-08b7c71b29fa>

¹⁰⁰Nassim Benchaabane, Family of teen hit by driver in St. Louis leans on 'strength,' asks for 'wave of prayers', https://www.stltoday.com/news/local/family-of-teen-hit-by-driver-in-st-louis-leans-on-strength-asks-for-wave/article_ff337d33-ce4d-5d30-bd16-396226506966.html.

The response to this tragedy was swift, and state and local leaders called out Ms. Gardner's incompetence. Mayor Tishaura O. Jones stated that Ms. Gardner's office had to improve. Mayor Jones stated, "[Ms. Gardner] really needs to do some soul-searching of whether or not she wants to continue as circuit attorney, because she's lost the trust of the people."¹⁰¹

One St. Louis business leader stated, "The ongoing failures of the Circuit Attorney's office—with regard to the individual involved in this case as well as a litany of other cases that have not been brought to justice—are unforgivable."¹⁰² St. Louis Aldermanic President Megan Green released a statement saying that she was frustrated "with our Circuit Attorney's oversight that contributed to this tragedy."¹⁰³ Alderman Mike Gras, of the Central West End, called for Gardner to resign, and he stated, "Our City deserves a circuit attorney that will represent our interests in the criminal justice system and Circuit Attorney

Gardner has shown clearly that she cannot."¹⁰⁴ Alderman Joe Vollmer, of the Hill, put it more simply: "She's a disaster. She needs to resign."¹⁰⁵

"Instead of protecting victims, Circuit Attorney Gardner is creating them. My office will do everything in its power to restore order, and eliminate the chaos in St. Louis caused by Kim Gardner's neglect of her office."

—Attorney General Bailey

"[Ms. Gardner] really needs to do some soul-searching of whether or not she wants to continue as circuit attorney, because she's lost the trust of the people."

—Mayor Tishaura O. Jones

Senate President Pro Tem Caleb Rowden called on Ms. Gardner to resign, saying that she was "incompetent and grossly unfit to hold her office."¹⁰⁶ House Speaker Dean Plocher also called on her to resign, stating, "Her willful neglect of duty has effectively resulted in her abdicating the duties of her office."¹⁰⁷

On February 22, 2023, Attorney General Andrew Bailey issued an ultimatum to Ms. Gardner: resign by noon the next day or face removal from office.¹⁰⁸ Attorney General Bailey stated: "Instead of protecting victims, Circuit Attorney Gardner is creating them. My office will do everything in its power to restore order, and eliminate the chaos in St. Louis caused by Kim Gardner's neglect of her office."

Ms. Gardner refused to resign.

¹⁰¹Austin Huguelet, The end of St. Louis' top prosecutor? Kim Gardner faces calls to resign, threat of removal, https://www.stltoday.com/news/local/crime-courts/the-end-for-st-louis-top-prosecutor-kim-gardner-faces-calls-to-resign-threat-of/article_d918486e-91d6-5da5-ba44-2181d70f8206.html

¹⁰²*Id.*

¹⁰³*Id.*

¹⁰⁴*Id.*

¹⁰⁵*Id.*

¹⁰⁶Jack Suntrup, Missouri Senate president, House speaker call on St. Louis Circuit Attorney Kim Gardner to resign, https://www.stltoday.com/news/local/crime-and-courts/missouri-senate-president-house-speaker-call-on-st-louis-circuit-attorney-kim-gardner-to-resign/article_c4a70d73-42f3-5c3a-9488-73bcabd1195d.html

¹⁰⁷*Id.*

¹⁰⁸Jack Suntrup, Missouri attorney general's ultimatum to Kim Gardner: Resign or face removal from office, https://www.stltoday.com/news/local/crime-courts/missouri-attorney-general-s-ultimatum-to-kim-gardner-resign-or-face-removal-from-office/article_9e129867-9845-5933-97e8-582b92a464c9.html#tracking-source=in-article

SUMMARY OF THE QUO WARRANTO PROCEEDINGS

FEBRUARY 2023

RECKLESSNESS REVEALED

On February 23, 2023, Attorney General Andrew Bailey filed a petition in quo warranto, seeking to remove Ms. Gardner from the Office of the St. Louis City Circuit Attorney. The petition alleged three counts, which were based largely on open source information: Count I, that Ms. Gardner had failed to prosecute criminal cases; Count II, that Ms. Gardner had failed to inform and confer with victims; and Count III, that Ms. Gardner had refused to exercise her judgment to determine whether to file charges that had been presented to her.¹⁰⁹

In response to the filing, Ms. Gardner held a press conference and stated that Attorney General Bailey was an “unelected individual who wants to use politics to stop the voice of the people in the city of St. Louis.”¹¹⁰ She continued, “It’s nothing more than voter suppression[.]”¹¹¹ Attorney General Bailey dismissed the accusation, stating: “This is about the rule of law and about justice. Instead of protecting victims, which is her obligation, she’s creating more victims by neglect in office.”¹¹² The

“This is about the rule of law and about justice. Instead of protecting victims, which is her obligation, she’s creating more victims by neglect in office.”

—Attorney General Bailey

president of the St. Louis Police Officers Association, Jay Schroeder, offered support for the proceedings, stating: “Unfortunately, Janae [Edmonson] isn’t the first victim who has been affected by Kim Gardner’s failures as circuit attorney, but

“We want to thank Attorney General Andrew Bailey for having the courage to stand up to Kim Gardner and finally take her to task for years of incompetence.”

—Jay Schroeder, President of the STL Police Officers Association

hopefully she will be the last[.]”¹¹³ He continued, “We want to thank Attorney General Andrew Bailey for having the courage to stand up to Kim Gardner and finally take her to task for years of incompetence.”¹¹⁴ Citing a conflict of interest, all of the judges of the Twenty-second Judicial Circuit recused themselves from the proceedings.¹¹⁵

On February 24, 2023, the AGO filed a motion for an expedited trial date and a motion for expedited discovery.¹¹⁶ The Missouri Supreme Court assigned Judge John Torbitzky to preside over the proceedings.¹¹⁷ On February 27, 2023, Judge Torbitzky granted the AGO’s request for a preliminary order in quo warranto and ordered Ms. Gardner to answer the petition.¹¹⁸ The AGO also filed a notice to take a videotaped deposition of Ms. Gardner.¹¹⁹ On February 28, 2023, the AGO continued its investigation and began to conduct in-person interviews with potential witnesses and other individuals.

¹⁰⁹State of Missouri, ex inf. Andrew Bailey, Attorney General v. Kimberly M. Gardner, 2322-CC00383 (St. Louis City Cir. Ct.) (Petition in Quo Warranto filed February 23, 2023).

¹¹⁰Rachel Lippmann & Jason Rosenbaum, Missouri attorney general launches effort to remove Kim Gardner from office, <https://news.stlpublicradio.org/government-politics-issues/2023-02-23/missouri-attorney-general-launches-effort-to-remove-gardner-from-office>

¹¹¹*Id.*

¹¹²*Id.*

¹¹³*Id.*

¹¹⁴*Id.*

¹¹⁵State of Missouri ex inf. Andrew Bailey, Attorney General v. Kimberly M. Gardner, 2322-CC00383 (St. Louis City Cir. Ct.) (Order dated February 23, 2023).

¹¹⁶*Id.* (Motions filed February 24, 2023).

¹¹⁷*Id.* (Judicial transfer dated February 24, 2023).

¹¹⁸*Id.* (Order dated February 27, 2023).

¹¹⁹*Id.* (Notice filed February 27, 2023).

February: Recklessness Revealed

February 22

Attorney General Andrew Bailey called on Gardner to resign from her position as Circuit Attorney of the City of St. Louis and gave her until noon on February 23rd to resign; otherwise, a quo warranto suit would be filed to remove her from office.

February 23

After Gardner refused to resign, on February 23, 2023, at 12:01 PM, the Attorney General's Office (AGO) filed its quo warranto action on behalf of the people of the State of Missouri, seeking her removal as a failed prosecutor.

February 24

The AGO filed a motion for an expedited trial date.

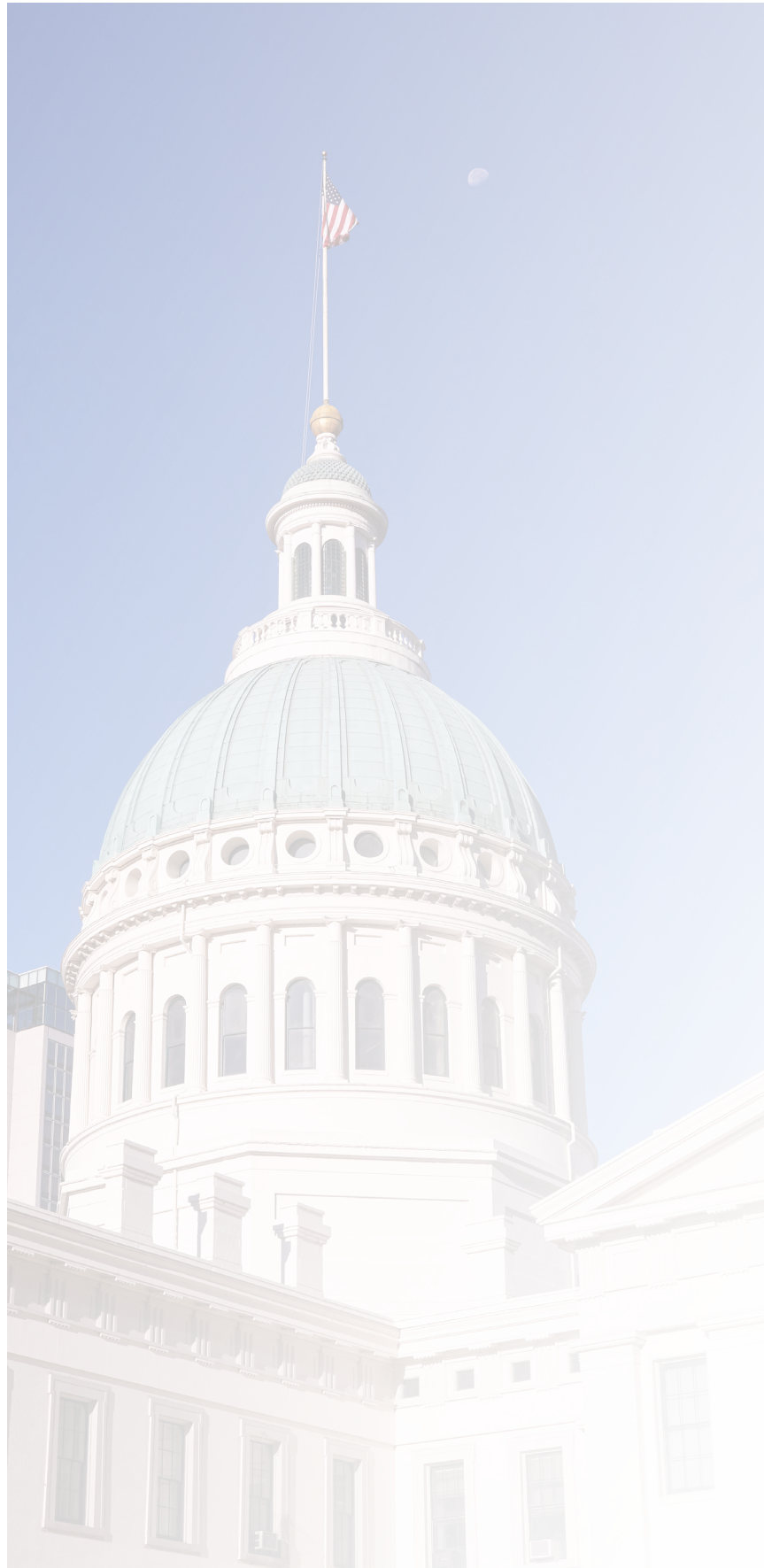
February 27

On February 27, 2023, based on the Court's review of the AGO's Petition, Judge John Torbitzky granted the State's request for a Preliminary Order in Quo Warranto and ordered Gardner to answer the AGO's Petition.

The AGO filed a Notice of Videotaped Deposition of Kimberly M. Gardner.

February 28

The AGO began in-person witness interviews.



MARCH 2023

INVESTIGATION ENSUES

In the first half of March 2023, the AGO noticed up depositions on three of Ms. Gardner's senior staff and served subpoenas on those three senior staff members, the Circuit Attorney's Office (CAO), the St. Louis City comptroller, Mayor Tishaura Jones, the records custodian of the Twenty-second Judicial Circuit, the REJIS Commission, and Assistant Circuit Attorney (ACA) Natalia Ogurkiewicz.¹²⁰

On March 10, 2023, Ms. Gardner filed a motion for the admission pro hac vice of Ronald S. Sullivan Jr., a professor at Harvard Law School.¹²¹

That motion was granted.¹²² On March 14, 2023, another attorney from Kansas City entered his appearance on behalf of Ms. Gardner. On that same date, Ms. Gardner filed her Answer to the Petition in Quo Warranto, a Motion to Dismiss the Petition, and a Motion to Stay Discovery.¹²³ As evidenced by the signature block in those pleadings, in addition to her Kansas City attorney, Ms. Gardner had also retained the services of two St. Louis attorneys.¹²⁴

In her motion to dismiss, Ms. Gardner asserted that "a quo warranto petition must allege the official engaged in a corrupt intentional act of misconduct or a corrupt intentional failure to act in the performance of official duties, and a mere failure of such a duty is insufficient."¹²⁵ She also laid the groundwork for a "pass the buck" defense by

arguing, "Though he was required by statute and caselaw to plead facts asserting intentional and willful conduct by Ms. Gardner, [Attorney General] Bailey's Petition – when it asserts facts, as opposed to conclusions – alleges misjudgments by line attorneys in the conduct of individual cases."¹²⁶ She continued, "As to Ms. Gardner, the Petition fails to do anything other than try to convert the alleged negligence of others into willful conduct by Ms. Gardner."¹²⁷

On March 15, 2023, the AGO filed a Motion for Leave to File Amended Petition in Quo Warranto,

to Schedule Hearing for Pending Motions, and to Schedule a Trial Date.¹²⁸

By that time, the AGO's intensive investigation had unearthed significant new evidence and information regarding Ms. Gardner's dereliction of her duties.¹²⁹ Also on March 15, the CAO filed objections and moved

to quash the AGO's subpoena.¹³⁰ On March 16, Ms. Gardner opposed the AGO's request for leave to file an amended petition.¹³¹ Also on March 16, Judge Booker T. Shaw entered his appearance on behalf of the judges of the Twenty-second Judicial Circuit.¹³²

On March 17, 2023, the Twenty-second Judicial Circuit filed a response and produced documents in response to the AGO's subpoena.¹³³ That same day, Judge Torbitzky granted the AGO leave to file an amended petition.¹³⁴ He ordered that the AGO file its amended petition by March 23, 2023, and that Ms. Gardner file her responsive pleading by

“On March 21, 2023, based on its extensive investigation—which included meetings with victims, judges, former assistant circuit attorneys, and a review of thousands of documents—the AGO filed its Amended Petition in Quo Warranto, which expanded significantly upon the allegations in the original petition.”

¹²⁰/d. (entries dated March 1, March 2, March 7, March 8, March 10, and March 15, 2023). The subpoenas sought several categories of documents. A more detailed list of the requested documents is included below in the section entitled "Timeline of the Quo Warranto Proceedings."

¹²¹/d. (Motion filed March 10, 2023).

¹²²/d. (Order dated March 14, 2023).

¹²³/d. (Motions filed March 14, 2023).

¹²⁴/d.

¹²⁵/d. (Motion to dismiss, p. 1).

¹²⁶/d. (Motion to dismiss, p. 3).

¹²⁷/d.

¹²⁸/d. (Motion filed March 15, 2023).

¹²⁹/d.

¹³⁰/d. (Motion filed March 15, 2023).

¹³¹/d. (Opposition filed March 16, 2023).

¹³²/d. (Entry filed March 16, 2023).

¹³³/d. (Objections and response filed March 17, 2023).

¹³⁴/d. (Order dated March 17, 2023).

March 31, 2023.¹³⁵

On March 21, 2023, based on its extensive investigation—which included meetings with victims, judges, former assistant circuit attorneys, and a review of thousands of documents—the AGO filed its Amended Petition in Quo Warranto, which expanded significantly upon the allegations in the original petition.¹³⁶ The 120-page petition included ten counts against Ms. Gardner:

THE AMENDED PETITION ALLEGED TEN COUNTS:

- I. Failing to prosecute criminal cases;**
- II. Failing to review and charge cases submitted by law enforcement;**
- III. Failing to review reports of officer-involved shootings;**
- IV. Failing to comply with discovery obligations;**
- V. Failing to timely dispose of evidence in criminal cases, creating a danger to law enforcement personnel left “drowning in drugs” seized from crime scenes;**
- VI. Failing to hire, train, and supervise her staff to carry out the work of her office;**
- VII. Failing to comply with public records requests under the Missouri Sunshine Law;**
- VIII. Mismanaging her office finances and burdening the city with hundreds of thousands of dollars in legal fees;**
- IX. Violating the constitutional rights of victims by failing to inform and confer with them about pending cases; and**
- X. Failing to timely dispose of criminal cases, violating the rights of victims and defendants alike.¹³⁷**

The amended petition was accompanied by sixty-one supporting exhibits.¹³⁸

On March 22, 2023, one of Ms. Gardner's assistants moved for the admission pro hac vice of three Washington, D.C. attorneys to represent the CAO.¹³⁹ Those motions were granted.¹⁴⁰ Also on March 22, an attorney entered an appearance for Assistant Circuit Attorney Ogurkiewicz.¹⁴¹ On March 24, Ms. Gardner requested an extension of time to file her response to the Amended Petition.¹⁴² The AGO opposed the motion, arguing against any delay and asserting that Ms. Gardner's “dereliction of her duties presents an ongoing threat to the orderly administration of justice and the peace and safety of the people of St. Louis City.”¹⁴³ The court granted Ms. Gardner eleven extra days to file her response.¹⁴⁴ Also on March 24, the CAO asked for a protective order and moved to quash the AGO's subpoenas that had been served on employees of the CAO.¹⁴⁵

On March 29, 2023, Judge Torbitzky scheduled a case management conference, and his order directed the parties to be prepared to discuss various topics, including the sequence and timing of discovery.¹⁴⁶ Up to that time, and during the first two weeks of April, the AGO continued to seek to obtain discovery, and it noticed up depositions of the corporate representatives of the St. Louis City Comptroller's Office, the St. Louis City's Budget Division, and the Circuit Attorney's Office.¹⁴⁷

¹³⁵*Id.*

¹³⁶*Id.* (Amended Petition filed March 21, 2023).

¹³⁷*Id.* (Motions filed March 22, 2023).

¹³⁸*Id.* (Orders dated March 24, 2023).

¹³⁹*Id.* (Entry filed March 22, 2023).

¹⁴⁰*Id.* (Orders dated March 24, 2023).

¹⁴¹*Id.* (Entry filed March 22, 2023).

¹⁴²*Id.* (Motion filed March 24, 2023).

¹⁴³*Id.* (Suggestions in Opposition filed March 24, 2023).

¹⁴⁴*Id.* (Order dated March 27, 2023).

¹⁴⁵*Id.* (CAO's Motion filed March 24, 2023).

¹⁴⁶*Id.* (Order dated March 29, 2023).

¹⁴⁷*Id.* (Entries on March 28, April 6, and April 10, 2023).

II. March : Investigation Ensues

March 1

The AGO served a subpoena for documents on the Circuit Attorney's Office, seeking, among other things, the following documents (for various time periods):

- Documents related to the administration of Gardner's office, including organizational charts, lists of individuals employed by the Circuit Attorney's Office, and any procedures or policies of the Circuit Attorney's Office;
- Documents related to the budget of the Circuit Attorney's Office, including documents concerning the budgetary process, records of grant funding, lists of consultants and advisors, records of payments made to consultants and advisors;
- Emails or other correspondence between Gardner and her senior staff regarding the allegations in the AGO's pleading;
- Documents reflecting the operation of Gardner's warrant office, including documents indicating the issuance or refusal of charges;
- Documents reflecting cases that were dismissed and refiled, including documents indicating the reasons for each dismissal;
- Documents depicting all sanctions entered against the Circuit Attorney's Office;
- Documents reflecting all instances in which the Circuit Attorney's Office failed to timely appear for court; and
- Documents concerning all complaints from victims received by the Circuit Attorney's Office.

March 3

The AGO served subpoenas for documents on Tishaura Jones, Mayor of the City of St. Louis, seeking text messages and emails with Ms. Gardner; and Darlene Green, Comptroller of the City of St. Louis, seeking text messages and emails with Ms. Gardner.

March 8

The AGO served a subpoena for documents on the 22nd Judicial Circuit Court, seeking the following key documents:

- A summary or list reflecting the dismissals of felony criminal cases, and the reasons for those dismissals, between January 1, 2017, and March 7, 2023;
- A summary or list reflecting the felony criminal cases tried in the 22nd Judicial Circuit between January 1, 2017, and March 7, 2023;
- A summary or list of all open cases for each assistant circuit attorney;
- A summary or list of all first-degree murder, second-degree murder, first-degree assault, first-degree robbery, voluntary manslaughter, and involuntary manslaughter cases pending before the 22nd Judicial Circuit; and
- A summary or list of the average time to disposition for certain violent offenses.



March 10

The AGO served a subpoena for documents on the St. Louis City Comptroller's Office, seeking, among other things, the following documents:

- Any documents reflecting the financial income and expenditures of the Circuit Attorney's Office, including documents related to the drafting of the office's budget or the appropriation and expenditure of office funds;
- Any draft or final budgets from January 1, 2017, through March 10, 2023; and
- All documents reflecting payments from the Circuit Attorney's Office to outside law firms.

The AGO served a second subpoena for documents on the Circuit Attorney's Office, seeking, among other things, the following important documents:

- All confidentiality, non-disparagement, and non-disclosure agreements between the Circuit Attorney's Office and assistant circuit attorneys or other staff;
- All text messages, voicemails, emails, correspondence, or other communications between the Circuit Attorney's Office and the Vera Institute of Justice; and
- All written agreements between the Circuit Attorney's Office and the Vera Institute of Justice.
- The AGO served subpoenas for documents on Gardner's senior leadership team—Christopher Hinckley, and Serena Wilson-Griffin—seeking, among other things, the following key documents:
- Communications, including, among other things, emails or other correspondence, and records regarding specific allegations in the AGO's petition and communications between members of the senior leadership team;
- Documents reflecting complaints from victims; and
- Communications between the warrant office of the Circuit Attorney's Office and the St. Louis Metropolitan Police Department.

March 13

The Mayor and the Comptroller provided records in response to the AGO's subpoenas.

March 14

The Comptroller provided additional records in response to the AGO's subpoenas.

March 15

The AGO filed a motion for leave to amend its petition for quo warranto after many hours of investigation, including reviewing hundreds of pages of records and interviewing more than 25 witnesses.

The AGO served a subpoena on ACA Natalia Ogurkiewicz.

March 17

The 22nd Judicial Circuit provided records in response to the AGO's subpoena.

Judge John Torbitzky granted the AGO leave to file its Amended Petition.

March 21

The AGO filed its amended petition for quo warranto based on its extensive investigation from February 24, 2023, to March 21, 2023, and the startling additional facts that the AGO learned. Before filing the amended petition, the AGO:

- Analyzed thousands of pages of Court files.
- Analyzed nearly 30,000 pages of documents received from the St. Louis City Mayor's Office, the St. Louis City Comptroller's Office and the St. Louis City Budget Office in response to the AGO's subpoenas;
- Analyzed hundreds of pages of statistical documents received from the 22nd Judicial Circuit Court;
- Analyzed thousands of pages of publicly available information;
- Analyzed statistical data from the Missouri Office of State Court Administrator; and
- Interviewed more than 30 witnesses.

March 21

The AGO's 120-page, ten-count Amended Petition set forth ten instances of Ms. Gardner's failure to perform her duties:

- Count I. That Ms. Gardner failed to prosecute criminal cases;
- Count II. That Ms. Gardner failed to review and charge cases submitted by law enforcement;
- Count III. That Ms. Gardner failed to review reports of officer-involved shootings;
- Count IV. That Ms. Gardner failed to comply with discovery obligations;
- Count V. That Ms. Gardner failed to timely dispose of evidence in criminal cases, creating a danger to law enforcement personnel left "drowning in drugs" seized from crime scenes;
- Count VI. That Ms. Gardner failed to hire, train, and supervise her staff to carry out the work of her office;
- Count VII. That Ms. Gardner failed to comply with public records requests under the Missouri Sunshine Law;
- Count VIII. That Ms. Gardner mismanaged her office finances and burdened the city with hundreds of thousands of dollars in legal fees;
- Count IX. That Ms. Gardner violated the constitutional rights of victims by failing to inform and confer with them about pending cases; and
- Count X. That Ms. Gardner failed to timely dispose of criminal cases, violating the rights of victims and defendants alike.

March 21

The comptroller and the budget division provided additional responsive records.

March 23

One of the most well-respected prosecutors in Missouri and a former Assistant Circuit Attorney, agreed, at no charge, to serve as an expert witness for the State and to testify about Gardner's many willful failures to perform her duties in violation of Missouri law.

March 24

The CAO asked for a protective order and moved to quash the AGO's subpoenas that had been served on employees of the CAO.

March 27

The AGO served a senior member of Ms. Gardner's administration at his home with a subpoena for a deposition and documents after learning that Ms. Gardner was contesting service of AGO subpoenas. The senior member of Ms. Gardner's administration later reached out to the AGO to advise the AGO that he would be leaving the United States from April 21, 2023 through June 17, 2023, and he requested that the AGO move his deposition to June 2023, which the AGO agreed to do.

March 28

The AGO noticed the deposition of Christopher W. Hinckley for May 17, 2023.

Ms. Gardner held a rally at a local church and announced her plans to seek a third term as Circuit Attorney.

APRIL 2023

PASSING THE BUCK

Outside the courtroom, the proceedings garnered nearly continuous media coverage, and, on April 10, 2023, Judge Torbitzky granted the media access to the case management conference.¹⁴⁸ The conference was scheduled for April 18, 2023, in the Ceremonial Courtroom of the Civil Courts Building in St. Louis.¹⁴⁹

On April 11, 2023, Ms. Gardner filed her Answer to the Amended Petition in Quo Warranto and a Motion to Dismiss Amended Petition.¹⁵⁰ A common refrain in Ms. Gardner's motion to dismiss was that she did not "personally" do anything that would warrant her ouster under § 106.220.¹⁵¹ She argued that she was not responsible for the conduct of her assistants, and, thus, that she could not be held accountable for their action or inaction.¹⁵² She asserted that "to state a claim for [her] ouster, [the Attorney General] must show she, herself, personally committed the requisite intentional misconduct, not her subordinates."¹⁵³ On April 17, 2023, the AGO

filed suggestions in opposition to Ms. Gardner's motion to dismiss and suggestions in opposition to the CAO's motion to quash the AGO's subpoenas.¹⁵⁴

On April 18, 2023, the court held the case management conference. The parties argued Ms. Gardner's motion to dismiss, and the court took that motion under submission.¹⁵⁵

“She argued that she was not responsible for the conduct of her assistants, and, thus, that she could not be held accountable for their action or inaction.”

The court then took up the CAO's motion to quash, and the attorney who argued on behalf of the CAO, Mr. Jonathan Jeffress, stated that he thought the court should defer ruling on the discovery motions until after the court ruled on the motion to dismiss.¹⁵⁶ When Mr. Jeffress conceded that the CAO could produce some of the requested documents, the court recessed and directed Mr. Jeffress to confer with the Attorney General's

Office.¹⁵⁷ After a lengthy discussion, the AGO informed the court that the CAO had agreed to produce 14 of the 59 categories of requested documents.¹⁵⁸ The CAO had also indicated that it might produce documents in eight additional categories.¹⁵⁹ However, the CAO had stated that it objected to turning over any documents in the remaining 37 categories.¹⁶⁰

Although he had previously made his objections in the CAO's motion filed on March 24, 2023, Mr. Jeffress then proposed that he be given additional time to explain "what exact privileges we are invoking here[.]"¹⁶¹ The AGO objected to further delay and pointed out that the CAO had raised "blanket objections" in its motion to quash.¹⁶² **When Mr. Jeffress stated that he was not prepared to argue his objections in light of the AGO's detailed responses to his objections, the court asked, "Why are you not prepared?"**¹⁶³ Ultimately, the court indicated that it would hear argument and give the CAO a week to file a written response.¹⁶⁴ The court then heard arguments on the pending discovery motions.¹⁶⁵

¹⁴⁸/d. (Order dated April 10, 2023).

¹⁴⁹/d. (Order dated April 10, 2023).

¹⁵⁰/d. (Motions filed April 11, 2023).

¹⁵¹/d. (Motion to Dismiss filed April 11, 2023, pp. 1, 8, 12–14, 19, 22–29, 31, 33, 35–38).

¹⁵²/d. (Motion to Dismiss, p. 19).

¹⁵³/d.

¹⁵⁴/d. (Suggestions filed April 17, 2023).

¹⁵⁵/d. (Order dated April 19, 2023).

¹⁵⁶/d. (April 18, 2023 hearing transcript, filed May 1,

2023, at pp. 5–6).

¹⁵⁷/d. (pp. 10–11).

¹⁵⁸/d. (p. 12).

¹⁵⁹/d. (pp. 13–14).

¹⁶⁰/d. (p. 14).

¹⁶¹/d. (p. 15).

¹⁶²/d.

¹⁶³/d. (pp. 17–18).

¹⁶⁴/d. (pp. 19–20).

¹⁶⁵/d. (pp. 20–98).

On April 19, 2023, the court issued an order summarizing its actions at the case management conference and setting forth various dates related to the pending discovery motions and the impending trial.¹⁶⁶ The court set the case for trial on September 25, 2023.¹⁶⁷

On April 26, the motion having been fully briefed and argued, the court took Ms. Gardner's motion to dismiss under submission.¹⁶⁸ Thereafter, on April 28, at 5:23 PM, Ms. Gardner filed an application for change of judge.¹⁶⁹ The application was apparently another effort to delay the case, as it was filed on the fifty-ninth day after service of the preliminary order in quo warranto.¹⁷⁰

Throughout the proceedings, the AGO continued its investigation into Ms. Gardner's conduct while in office. And, not long after commencing its investigation, **the AGO learned that Ms. Gardner might be enrolled at St. Louis University and doing clinical work at Family Care Health Centers in pursuit of an advanced nursing degree.**¹⁷¹ Accordingly, on April 27, 2023, the State sent an investigator to the Family Care Health Center located at 4352 Manchester Avenue in St. Louis.¹⁷²

Based on the investigator's observations, Ms. Gardner was present at the clinic for at least two hours and fifty minutes that day, from at least 9:55 AM until 12:44 PM.¹⁷³ She then left the clinic and drove to the Carnahan Courthouse at

1114 Market Street, where the office of the St. Louis City Circuit Attorney is located.¹⁷⁴ That very day, Ms. Gardner was also supposed to appear in person or by her designee in *State v. Vincent*, 2122-CR00600-01 (St. Louis City Ct.), "to show cause why she should not be held in contempt based on an alleged willful failure to appear in Division 22 on April 10, 2023, and April 24, 2023."¹⁷⁵ Ms. Gardner sent a designee to that hearing, along with one of the attorneys who was representing her in the quo warranto proceedings. **After hearing evidence, the**

court concluded that "[t]he Circuit Attorney's Office appears to be a rudderless ship of chaos."¹⁷⁶

As more of her failures came to light, and as the dysfunction within her office continued to manifest, Ms. Gardner remained defiant. On April 29, 2023, Ms. Gardner appeared at a

"town hall forum" and addressed a crowd of supporters.¹⁷⁷ She told them that she had "never had a fair shake."¹⁷⁸ She balked at the idea that her office was a "rudderless ship of chaos," and she stated: "What are you talking about? The criminal justice system is doing what it's always designed to do. And we're trying to change a Titanic of a ship to be fair and just."¹⁷⁹ She characterized the quo warranto proceedings as a "witch hunt," and she assured her supporters that she was not going to resign: "I'm not leaving. I'm not resigning. I'm not doing nothing. You gonna have to remove me."¹⁸⁰

“She characterized the quo warranto proceedings as a “witch hunt,” and she assured her supporters that she was not going to resign: “I’m not leaving. I’m not resigning. I’m not doing nothing. You gonna have to remove me.”

¹⁶⁶*Id.* (Order dated April 19, 2023).

¹⁶⁷*Id.*

¹⁶⁸*Id.* (Order dated April 26, 2023).

¹⁶⁹*Id.* (Application filed April 28, 2023).

¹⁷⁰See *Id.* (Order dated May 2, 2023).

¹⁷¹See *Id.* (Suggestions filed May 15, 2023).

¹⁷²*Id.* (Suggestions filed May 15, Exhibit A).

¹⁷³*Id.*

¹⁷⁴*Id.*

¹⁷⁵*Id.* (Suggestions filed May 14, 2023, Exhibit B).

¹⁷⁶*Id.*

¹⁷⁷Mark Maxwell, Gardner: 'I've never had a fair shake,' <https://www.ksdk.com/article/news/politics/kim-gardner-im-not-leaving-im-not-resigning/63-6ba1028f-4f43-41c8-9100-49b7dca41c42>

¹⁷⁸*Id.*

¹⁷⁹*Id.*

¹⁸⁰*Id.*

III. April: Passing the Buck

April 6

One of the most well-respected St. Louis criminal defense lawyers, agreed, at no charge, to serve as an expert witness for the State and to testify about Gardner's many willful failures to perform her duties, which directly affected defendants' constitutional rights, such as discovery abuses and dismissing cases on the eve of trial.

The AGO served a subpoena for a videotaped deposition and for key documents on the Budget Division of St. Louis on the following subjects:

- The Circuit Attorney's Office's proposed and approved annual budgets for fiscal years 2014–2024;
 - The Circuit Attorney's Office's proposed and approved supporting schedules, including personnel schedules, offered in support of the office's annual budget;
 - The Circuit Attorney's Office's personnel schedules and requests for additional personnel;
 - The Circuit Attorney's Office's requests and expenditures related to the salaries and benefits of office personnel; and
 - The monies transferred by Gardner to pay for the legal expenses of the Circuit Attorney's Office.
- The AGO served a subpoena for a videotaped deposition of the Comptroller's Office of St. Louis on the following subjects:
- The Circuit Attorney's Office's receipts and expenditures for fiscal years 2017–2023, including the process for drafting and approving the office's budget;
 - The Circuit Attorney's Office's contracts with, and payments to, outside law firms; and
 - All payments from the Circuit Attorney's Office to Maurice Foxworth and his associated businesses.

April 10

Judge John Torbitzky entered an order allowing the news media to televise the court proceedings scheduled for April 18.

April 11

The AGO served an amended subpoena for a videotaped deposition and documents on the Circuit Attorney's Office, seeking key documents (from various time periods) and testimony about the following important subjects:

- Documents related to the administration of Gardner's office, including organizational charts, lists of individuals employed by the Circuit Attorney's Office, and any data-retention procedures or policies of the Circuit Attorney's Office;
- Documents related to the budget of the Circuit Attorney's Office, including documents concerning the budgetary process and records concerning grant funding related to the office's victim services;
- Training materials provided to assistant circuit attorneys;
- Emails or other correspondence between Gardner and her senior staff regarding staff shortages or turnover, warrant application backlogs, victims in any case specifically identified in the Attorney General's amended petition, complaints or concerns expressed by assistant circuit attorneys about the number of cases to which they were assigned, and complaints or concerns regarding the training of assistant circuit attorneys;
- Emails sent or received by assistant circuit attorneys concerning complaints or concerns about the number of cases to which they were assigned, and complaints or concerns regarding training;
- All contracts and agreements with Maurice Foxworth or his related businesses, any documents reflecting Maurice Foxworth's duties and responsibilities in the office; and all invoices or documents reflecting payments made by the Circuit Attorney's Office to Maurice Foxworth;
- Any policies concerning the necessity for assistant circuit attorneys to obtain approval for entering plea agreements or filing motions to dismiss cases;
- Documents reflecting the operation of Gardner's warrant office, including documents indicating the issuance or refusal of charges;
- Documents reflecting cases that were dismissed and refiled, including documents indicating the reasons for each dismissal;
- Documents depicting all sanctions entered against the Circuit Attorney's Office;
- Documents reflecting all instances in which the Circuit Attorney's Office failed to timely appear for court; and
- Documents concerning all complaints from victims received by the Circuit Attorney's Office;
- All confidentiality, non-disparagement, and non-disclosure agreements between the Circuit Attorney's Office and assistant circuit attorneys or other staff; and
- All correspondence and agreements between the Circuit Attorney's Office and the Vera Institute of Justice.

April 11

Ms. Gardner filed her Answer to the Amended Petition in Quo Warranto and a Motion to Dismiss Amended Petition.

April 17

The AGO filed an opposition to Ms. Gardner's motion to dismiss the petition.

The AGO filed an opposition to the Circuit Attorney's Office's motion to quash the AGO's subpoenas. Ms. Gardner engaged four lawyers from a Washington, DC law firm to represent her office and to file its motion to quash the AGO's subpoenas.

Judge Scott Millikan issued a Show Cause Order in *State v. Jonathan Jones*, 2222-CR01348-01 (St. Louis City Cir. Ct.) (Order to Show Cause Apr. 17, 2023), setting a hearing and ordering that Ms. Gardner and one of her Assistant Circuit Attorneys show cause as to why Ms. Gardner and her Assistant Circuit Attorney should not be held in contempt of court for failing to appear in court for a murder trial.

April 18

Judge John Torbitzky held a lengthy hearing on all pending motions.

Judge Torbitzky issued an Order setting the case for an expedited trial beginning on September 25, 2023.

April 19

The AGO learned through its investigation that Gardner was enrolled in the St. Louis University School of Nursing Master's Program. The AGO immediately expanded its investigation into this extraordinary development.

April 21

Ms. Gardner's legal team filed its opposition to Judge Scott Millikan's show cause order. Attached to Ms. Gardner's response were text messages and internal communications that the AGO had requested on March 1 and April 11, 2023, and which Ms. Gardner had refused to provide. These communications showed an office in complete chaos.

April 24

Judge Scott Millikan held a Show Cause hearing on whether Ms. Gardner and her ACA should be held in contempt.

Judge Michael Noble issued a second Show Cause Order and set a hearing as to why Ms. Gardner and one of her Assistant Circuit Attorneys should not be held in contempt for failing to appear in court for a different murder trial. Judge Noble set the Show Cause hearing for April 27, 2023 at 1:30 PM.

April 27

Ms. Gardner spent the entire morning, and part of the afternoon, until 12:44 PM, at Family Care Health Centers located at 4352 Manchester Avenue. Ms. Gardner was apparently performing her clinicals (or practicum) at this clinic to meet the criteria to obtain her nursing degree from St. Louis University. An AGO investigator witnessed Ms. Gardner at the clinic.

At 1:30 PM, Judge Noble conducted a Show Cause hearing. Ms. Gardner failed to personally appear. Judge Noble issued a Show Cause Order, making the extraordinary finding that there was probable cause to believe that Ms. Gardner and her ACA were guilty of indirect criminal contempt. He set an evidentiary hearing for May 30, 2023. Judge Noble found that Gardner's office appeared to be a "rudderless ship of chaos."

April 28

Despite findings by Judge Noble, Ms. Gardner returned to Family Care Health Centers. Again, an AGO investigator witnessed Ms. Gardner at the clinic.

Ms. Gardner filed a motion for change of judge (waiting until the second-to-last day (59th day) to file such a motion) to remove Judge Torbitzky as the trial judge.

April 29

Ms. Gardner proclaimed "I'm not leaving, I'm not resigning. I'm not doing nothing. You're gonna have to remove me."

April 30

By the end of April, the AGO interviewed nearly forty witnesses.

MAY 2023

JUSTICE RESTORED

On May 2, 2023, Judge Torbitzky entered various orders on the motions that he had taken under submission at the case management conference. As to Counts I, II, III, IV, VI, IX, and X, the court denied Ms. Gardner's motion to dismiss, concluding that those seven counts "sufficiently state claims for removal under § 106.220."¹⁸¹ The court stated:

"The number of alleged incidents and cases impacted, particularly when considering all of the allegations in each of these Counts together, and in combination with the allegations that the examples are part of a pattern and practice of conduct, gives rise to a reasonable inference that Respondent has intentionally failed to act contrary to a known duty. The facts alleged in the petition also permit the reasonable inference that Respondent was aware of occurrences in her office and yet took no action. There is also a reasonable inference that Respondent's subordinates were acting at her direction or in accordance with her policies.

On May 2, 2023, the AGO served subpoenas on the St. Louis University Nursing School and Family Care Health Centers, seeking information about Ms. Gardner's enrollment, class schedules, and clinic work schedules.

*Whether any alleged failure of one of those subordinates could subject Respondent to ouster need not be answered at this time because the breadth of the allegations gives rise to the reasonable inference that [Respondent] has refused to perform her duties as the Circuit Attorney."*¹⁸²

The court also denied the vast majority of the CAO's objections to the AGO's subpoenas and ordered the CAO to produce the requested documents by June 2, 2023.¹⁸³ Finally, the court granted the application for change of judge.¹⁸⁴

On May 2, 2023, the AGO served subpoenas on the St. Louis University Nursing School and Family Care Health Centers, seeking information about Ms. Gardner's enrollment, class schedules, and clinic work schedules.¹⁸⁵ **A flurry of media reports followed on May 3, 2023, as Ms. Gardner's enrollment in nursing classes was yet another indication that she was not devoting her entire time and energy to the discharge of her official duties.**¹⁸⁶ That same day, the Missouri Supreme Court assigned Judge Thomas Chapman to preside over the case.¹⁸⁷

¹⁸¹*Id.* (Order regarding motion to dismiss dated May 2, 2023).

¹⁸²*Id.*

¹⁸³*Id.* (Order regarding subpoenas dated May 2, 2023).

¹⁸⁴*Id.* (Order regarding change of judge dated May 2, 2023).

¹⁸⁵*Id.* (Subpoena returns filed May 2, 2023).

¹⁸⁶See, e.g., Ryan Krull, Kim Gardner is Enrolled in a Graduate Nursing Program Even as Staffers Abandon Ship, <https://www.riverfronttimes.com/news/kim-gardner-is-enrolled-in-a-graduatenuing-program-even-as-staffers-abandon-ship-39980115>; Joe Mueller, Bailey alleges St. Louis circuit attorney taking nursing classes while in office, https://www.thecentersquare.com/missouri/article_b1e20a64-ea05-11ed-a2a0-e72865fbf817.html; AP News, Missouri AG continues attacks on St. Louis Attorney, <https://apnews.com/article/gardner-st-louis-prosecutorouster-attorney-general-20d98ef80b9a8a25d917b98597e6d802>

¹⁸⁷State of Missouri, ex inf. Andrew Bailey, Attorney General v. Kimberly M. Gardner, 2322-CC00383 (St. Louis City Cir. Ct.) (Transfer order dated May 3, 2023).

On May 4, 2023—notwithstanding her defiance just a few days earlier—Ms. Gardner saw the writing on the wall and announced her intention to resign from office on June 1, 2023.¹⁸⁸ Attorney General Bailey would not accept half measures from Ms. Gardner, and he vowed to maintain the quo warranto proceedings:

“There is absolutely no reason for the Circuit Attorney to remain in office until June 1st. We remain undeterred with our legal quest to forcibly remove her from office. Every day she remains puts the city of St. Louis in more danger. How many victims will there be between now and June 1st? How many defendants will have their constitutional rights violated? How many cases will continue to go unprosecuted?”¹⁸⁹

On May 5, 2023, the AGO filed an amended notice of deposition of Ms. Gardner.¹⁹⁰ The AGO noticed up her video deposition for May 18, 2023.¹⁹¹ The AGO also served another subpoena on the CAO seeking documents to further prove that Gardner had failed to devote her entire time and energy to her duties.¹⁹²

On May 8, in apparent retaliation, Ms. Gardner noticed up a deposition of Attorney General Bailey,

and requested the Attorney General's Office waive service of her subpoena on the Attorney General's Office.¹⁹³ Then, on May 9, both Ms. Gardner

and the CAO moved to stay discovery entirely.¹⁹⁴ Ms. Gardner also moved to quash the subpoenas that had been served on the St. Louis University Nursing School and Family Care Health Centers.¹⁹⁵ A hearing was noticed up on May 16, 2023, at 1:30 p.m., setting the stage for the likely production of documents from the nursing school and the clinic and the potential video deposition of Ms. Gardner.¹⁹⁶

However, two hours before the hearing, on May 16, at 11:31 am, Ms. Gardner sent an email to Governor Michael Parson to inform him that she was resigning from office “[e]ffective today.”¹⁹⁷ Then, apparently realizing that

any delay in her resignation would permit further action in the quo warranto proceedings—including disclosure of the nursing school records she was seeking to conceal—sixteen minutes later, at 11:47 am, Ms. Gardner sent a second email to Governor Parson, stating that her resignation was “effective immediately.”¹⁹⁸ Ms. Gardner then moved to dismiss the petition in quo warranto as

“ Every day she remains puts the city of St. Louis in more danger. How many victims will there be between now and June 1st? How many defendants will have their constitutional rights violated? How many cases will continue to go unprosecuted? ”

—Attorney General Bailey

“ On May 8, in apparent retaliation, Ms. Gardner noticed up a deposition of Attorney General Bailey, and requested the Attorney General's Office waive service of her subpoena on the Attorney General's Office. Then, on May 9, both Ms. Gardner and the CAO moved to stay discovery entirely. ”

¹⁸⁸ Susan L. Khoury & Lauren Trager, St. Louis Circuit Attorney Kim Gardner Resigns, <https://www.kmov.com/2023/05/04/st-louis-circuit-attorney-kim-gardner-resigns/>

¹⁸⁹ *Id.*

¹⁹⁰ State of Missouri, ex inf. Andrew Bailey, Attorney General v. Kimberly M. Gardner, 2322-CC00383 (St. Louis City Cir. Ct.) (Notice filed May 5, 2023).

¹⁹¹ *Id.*

¹⁹² *Id.* (Subpoena return filed May 5, 2023).

¹⁹³ *Id.* (Notice and Subpoena filed May 8, 2023).

¹⁹⁴ *Id.* (Motions filed on May 9, 2023).

¹⁹⁵ *Id.* (Motion filed May 9, 2023).

¹⁹⁶ *Id.* (Notices filed May 9 and May 11, 2023).

¹⁹⁷ *Id.* (Motion to Dismiss Quo Warranto as Moot, filed May 16, 2023, Exhibit A).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

moot.¹⁹⁹

At the scheduled hearing, at 1:30 PM, Judge Chapman heard argument on Ms. Gardner's motion to dismiss and took the matter under advisement. In light of the changed circumstances, the State made an oral motion to stay discovery for one week, and that motion was granted.²⁰⁰

On May 17, 2023, in light of Ms. Gardner's res-

ignation, Attorney General Bailey filed a voluntary dismissal of the amended petition in quo warranto, as the AGO had achieved the ultimate goal of removing Ms. Gardner from office.²⁰¹

IV. May and June: Justice Restored

May 2

Judge Torbitzky entered an Order that rejected most of Ms. Gardner's motion to dismiss the State's Amended Petition, leaving all of the State's seven primary claims against Ms. Gardner to remove her from office. Judge Torbitzky ruled:

The Attorney General could proceed on the following counts, alleging:

- I. That Ms. Gardner failed to prosecute criminal cases;
- II. That Ms. Gardner failed to review and charge cases submitted by law enforcement;
- III. That Ms. Gardner failed to review reports of officer-involved shootings;
- IV. That Ms. Gardner failed to comply with discovery obligations;
- VI. That Ms. Gardner failed to hire, train, and supervise her staff to carry out the work of her office;
- IX. That Ms. Gardner violated the constitutional rights of victims by failing to inform and confer with them about pending cases; and
- X. That Ms. Gardner failed to timely dispose of criminal cases, violating the rights of victims and defendants alike.

In considering the allegations pled by the Attorney General and ordering that these claims would proceed to trial, Judge Torbitzky stated, in relevant part:

The number of alleged incidents and cases impacted, particularly when considering all of the allegations in each of these Counts together, and in combination with the allegations that the examples are part of a pattern and practice of conduct, gives rise to a reasonable inference that [Ms. Gardner] has intentionally failed to act contrary to a known duty. The facts alleged in the petition also permit the reasonable inference that [Gardner] was aware of occurrences in her office and yet took no action. There is also a reasonable inference that [Gardner's] subordinates were acting at her direction or in accordance with her policies. Whether any alleged failure of one of those subordinates could subject [Gardner] to ouster need not be answered at this time because the breadth of the allegations gives rise to the reasonable inference that [Ms. Gardner] has refused to perform her duties as the Circuit Attorney.

²⁰⁰See Jason Rosenbaum and Rachel Lippmann, Kim Gardner resigns as St. Louis circuit attorney, 2 weeks earlier than expected, <https://news.stlpublicradio.org/government-politics-issues/2023-05-16/kim-gardner-resigns-as-st-lou->

[is-circuit-attorney-2-weeks-early](https://news.stlpublicradio.org/government-politics-issues/2023-05-16/kim-gardner-resigns-as-st-lou-is-circuit-attorney-2-weeks-early)

²⁰¹State of Missouri, ex inf. Andrew Bailey, Attorney General v. Kimberly M. Gardner, 2322-CC00383 (St. Louis City Cir. Ct.) (Notice filed May 17, 2023).

May 2

Judge Torbitzky rejected approximately 90% of Ms. Gardner's Office's objections to the State's subpoena (filed by Ms. Gardner's Washington, DC law firm) for many important documents from Ms. Gardner's Office. The Court ordered her office to produce these key documents by June 2, 2023. Ms. Gardner's Office was ordered to turn over thousands of pages of important documents, including the following documents:

- Documents related to the administration of Ms. Gardner's office, including organizational charts, lists of individuals employed by the Circuit Attorney's Office, and any data-retention procedures or policies of the Circuit Attorney's Office;
- Documents related to the budget of the Circuit Attorney's Office, including documents concerning the budgetary process and records concerning grant funding related to the office's victim services;
- Training materials provided to assistant circuit attorneys;
- Emails or other correspondence between Ms. Gardner and her senior staff regarding staff shortages or turnover, warrant application backlogs, victims in any case specifically identified in the Attorney General's amended petition, complaints or concerns expressed by assistant circuit attorneys about the number of cases to which they were assigned, and complaints or concerns regarding the training of assistant circuit attorneys;
- Emails sent or received by assistant circuit attorneys concerning complaints or concerns about the number of cases to which they were assigned, and complaints or concerns regarding training;
- All contracts and agreements with Maurice Foxworth or his related businesses, any documents reflecting Maurice Foxworth's duties and responsibilities in the office; and all invoices or documents reflecting payments made by the Circuit Attorney's Office to Maurice Foxworth;
- Any policies concerning the necessity for assistant circuit attorneys to obtain approval for entering plea agreements or filing motions to dismiss cases;
- Documents reflecting the operation of Ms. Gardner's warrant office, including documents indicating the issuance or refusal of charges;
- Documents reflecting cases that were dismissed and refiled, including documents indicating the reasons for each dismissal;
- Documents reflecting all sanctions entered against the Circuit Attorney's Office;
- With narrow limitations, documents concerning complaints from victims received by the Circuit Attorney's Office;
- All severance and post-employment agreements between the Circuit Attorney's Office and assistant circuit attorneys or other staff; and
- All correspondence and agreements between the Circuit Attorney's Office and the Vera Institute of Justice.

The AGO subpoenaed these documents to prove that Ms. Gardner violated Missouri law by failing to devote her entire time and energy to her duties as the chief law enforcement officer of St. Louis.

May 2

Judge Torbitzky then entered an order granting the motion for change of judge.

The AGO served a subpoena on the St. Louis University School of Nursing, seeking the following documents to prove how many days Ms. Gardner missed from work to attend classes and clinicals between August 2021 and April 2023:

- All documents reflecting Ms. Gardner's student directory information, course of study, class schedule, and hours worked in clinicals, internships, and practicums from January 1, 2021, to May 2, 2023;
- All documents reflecting the times, dates, and locations of all classes and clinicals taken by Ms. Gardner from January 1, 2021, to May 2, 2023; and
- All emails, including any attachments to those emails, sent from or received by Ms. Gardner's student email account from January 1, 2021, to May 2, 2023, regarding student directory information, course of study, class schedule, and hours worked in clinicals, internships, and practicums.

The AGO served a subpoena on Family Care Health Centers, seeking the following documents to prove how many days Ms. Gardner missed from work to attend clinicals:

- Exempting patient records or files, all agreements between Ms. Gardner and the Family Care Health Centers from January 1, 2021, to May 2, 2023;
- Exempting patient records or files, all correspondence and emails between Ms. Gardner and the Family Care Health Centers from January 1, 2021, to May 2, 2023;
- Exempting patient records or files, all documents reflecting the hours worked (including clinicals, internships, and practicums) by Ms. Gardner at the Family Care Health Centers; and
- Exempting patient records or files, all surveillance video depicting Ms. Gardner entering or exiting the Family Care Health Centers from January 1, 2021, to May 2, 2023.

May 3

The Mayor and the budget division provided additional records in response to the AGO's March subpoenas.

May 4

St. Louis University confirmed that Ms. Gardner was enrolled in its Nursing School, seeking a masters as a nurse practitioner, since the fall semester of 2021, which began on or about August 25, 2021.

The AGO calculated that from August 25, 2021, through April 28, 2023, Ms. Gardner was paid approximately \$281,028 in salary from St. Louis taxpayers.

Instead of protecting victims and prosecuting crime, instead of earning her salary and running her office, and instead of providing training and supervision to her ACAs, Ms. Gardner was an absent prosecutor.

The AGO took the videotaped deposition of Paul Paine, the Budget Director of St. Louis. Mr. Paine testified that in 2019, based on the passage of the Prop P sales tax, Ms. Gardner's office received an additional \$1,500,000 in appropriations, and has received that amount in each budget year. Thus, Ms. Gardner's office has not been "divested," as she has often claimed. Rather, Ms. Gardner had more than enough funds to staff and operate her office.

Ms. Gardner announced her intent to resign on June 1, 2023.

May 5

The AGO filed an amended deposition notice for Ms. Gardner, scheduling a videotaped deposition for May 18, 2023.

The AGO served a subpoena on the Circuit Attorney's Office seeking the following key documents to prove that Gardner had failed to devote her entire time and energy to her duties:

- From January 1, 2021, to May 5, 2023, any official office calendar for Ms. Gardner recording her daily activities, meetings, or obligations; and
- From January 1, 2021, to May 5, 2023, any log, calendar entry, human resource system entry or note reflecting Ms. Gardner's use of paid and unpaid leave.

May 9

The AGO filed a second amended notice to take the deposition of a corporate representative of the Comptroller's Office of St. Louis.

Ms. Gardner filed a motion to stay discovery and a motion to quash the subpoenas served on St. Louis University and Family Care Health Centers to try to prevent the AGO from obtaining the nursing school records.

May 11

The recently-assigned Judge Thomas N. Chapman entered an order allowing the news media to televise the hearing scheduled for May 16, 2023, to hear arguments on a number of motions.

May 15

The AGO took the videotaped deposition of Beverly Fitzsimmons, Deputy Comptroller for the City of St. Louis. **During that deposition, Fitzsimmons testified that Ms. Gardner had initiated and maintained a contract with Maurice Foxworth, in which Foxworth would receive a payment for services of \$5,000 per month without oversight from the City of St. Louis or the Comptroller's Office. Fitzsimmons also agreed that Maurice Foxworth had received payments from the Circuit Attorney's Office totaling at least \$351,500 since 2017.**

The AGO filed suggestions in opposition to Ms. Gardner's and the Family Care Health Centers' motion to quash the subpoenas served on St. Louis University and Family Care Health Centers. **Both the clinic and the university had agreed to provide all or some of the requested records if Ms. Gardner's motions were denied.**

The AGO filed responses to the Circuit Attorney's Office's objections to issues involving information electronically stored by the Circuit Attorney's Office.

May 16

At **11:31 AM**, Ms. Gardner emailed Governor Parson to inform him that she was **resigning from office "[e]ffective today."**

At 11:47 AM, Ms. Gardner again emailed Governor Parson and **stated that her resignation was "effective immediately."**

Ms. Gardner moved to dismiss the petition in quo warranto as moot, and therefore **vacate her deposition** scheduled for May 18.

At **1:30 PM**, Judge Chapman **heard argument on Ms. Gardner's motion to dismiss** and took the matter under advisement.

Governor Parson appointed Evan Rodriguez as Interim Circuit Attorney.

Governor Parson directed Attorney General Bailey to assist the Circuit Attorney in carrying out his duties.

Before 5:00 PM assistant attorneys general entered the Circuit Attorney's Office to **begin providing assistance and reviewing files.**

May 17

Assistant attorneys general and Interim Circuit Attorney Rodriguez met with the staff of the Circuit Attorney's Office to pledge support, answer questions, and provide assistance.

Attorney General Bailey filed a voluntary dismissal of the petition in quo warranto.

May 17–May 29

Assistant attorneys general provided assistance to the Circuit Attorney's Office, began stabilizing the office, and began restoring the criminal justice system in St. Louis. Assistant attorneys general provided assistance including, but not limited to:

- Meeting with assistant circuit attorneys to review their pending cases set for trial and offering to provide trial support and legal strategy;
- Re-opening the warrant office to in-person warrant applications on in-custody offenders and on serious cases;
- Attending homicide crime scenes when requested by the St. Louis Metropolitan Police Department;
- Authorizing the issuance of recommendations, plea deals, and plea offers;
- Providing training and assistance in staffing Division 16B, the in-custody bond hearings;
- Attending dockets to ensure that no court appearances were missed;
- Meeting with judges of the 22nd judicial circuit to obtain feedback and information about how to best support the functioning of the circuit;
- Meeting with members of the Circuit Attorney's Office staff who requested meetings to provide feedback and suggestions on how to improve the office;
- Processing discovery for immediate disclosure to criminal defendants;
- Conducting preliminary hearings in associate circuit court;
- Identifying action items and key areas of concern for the future administration; and
- Meeting with St. Louis Metropolitan Police Department staff to identify areas where cooperation can be improved.

May 30–June 2

Governor Parson appointed Gabe Gore as Circuit Attorney to replace the Interim Circuit Attorney Rodriguez.

The AGO provided assistance to Circuit Attorney Gore at his request.



MS. GARDNER'S RESIGNATION AND THE AFTERMATH

“

The Circuit Attorney has finally heeded my call to resign after undermining the rule of law for years. Today, we begin the process of restoring public safety to the City of St. Louis.

-Attorney General Andrew Bailey

”

MAY 16, 2023

MS. GARDNER'S RESIGNATION

On May 16, 2023, at 1:30 PM, the trial court was set to rule on the Attorney General's outstanding motions to force Ms. Gardner to participate in discovery by producing documents that she had refused to turn over, forcing a senior member of her administration give testimony on May 17, and forcing her to give her previously scheduled deposition on May 18.

Two hours before the hearing, and without notice to the Attorney General, Ms. Gardner sent two separate resignation letters to Governor Parson by email in order to effectuate her immediate resignation from office. The first email was sent at 11:31 PM, where Ms. Gardner said;

Governor Parson,

I have worked with St. Louis County Prosecuting Attorney Wesley Bell and his office to ensure a comprehensive transition plan to handle cases that prioritizes public safety is in place. Effective today, I will end my service as the City of St. Louis Circuit Attorney. I have done all I can to ensure a smooth transition.

Respectfully,

Kimberly M. Gardner

Then, at 11:47 AM, Ms. Gardner sent a second email to Governor Parson. This email said:

Governor Parson,

To be clear my resignation is effective immediately. As a result, I no longer serve as the Circuit Attorney of the City of St. Louis.

Respectfully,

Kimberly M. Gardner

Ms. Gardner did not appear at the scheduled court appearance. After the conclusion of the court appearance, the Attorney General and his team immediately began acting to establish a transition plan and looked for a path to provide assistance to the CAO and its employees.

MAY 2023**ASSISTING THE CIRCUIT
ATTORNEY'S OFFICE**

Immediately after learning of Ms. Gardner's resignation, the Attorney General's Office began reaching out to stakeholders in the criminal justice system, pledging to provide whatever assistance the Attorney General could. Representatives from the Attorney General's Office began meeting with the 22nd Judicial Circuit and its legal counsel, and a team of Assistant Attorneys General were dispatched to the Circuit Attorney's Office to provide assistance and to be on standby for further orders. The Attorney General received formal notice that the Governor had appointed Evan Rodriguez as the interim circuit attorney. Contemporaneously, the Attorney General received formal notice of a directive from the Governor that the Attorney General should provide assistance to the Circuit Attorney's Office until the Governor appointed a new Circuit Attorney. At that time, representatives from the Attorney General's Office continued their meeting with the 22nd Judi-

cial Circuit before joining the AGO team in place at the Circuit Attorney's Office. AGO staff remained on site at the CAO for the next few hours, providing assistance and preparing to reopen the office with Interim Circuit Attorney Rodriguez the next morning.

The next day, May 17, five assistant attorneys general joined Interim Circuit Attorney Rodriguez to officially reopen the office. Interim Circuit Attorney Rodriguez met with the remaining employees

— **“** —
Immediately after learning of Ms. Gardner's resignation, the Attorney General's Office began reaching out to stakeholders in the criminal justice system, pledging to provide whatever assistance the Attorney General could.
— **”** —

of the Circuit Attorney's Office, briefly answered questions, and introduced the assistant attorneys general who would be providing assistance to the office. Interim Circuit Attorney Rodriguez graciously provided the Attorney General's Office with on-site offices, and designated the assistant attorney generals to serve as his senior leadership

team. The in-person warrant office was reopened, and attorneys began assessing current caseloads and matters set for trial, and provided assistance with dockets and other court appearances.



MAY 17, 2023, TO JUNE 2, 2023

CONTINUED ASSISTANCE

The Attorney General's assistance continued throughout Interim Circuit Attorney Rodriguez's tenure. Assistant attorneys general acted as the senior leadership team, provided plea authority to assistant circuit attorneys, covered dockets and court appearances, and represented the state's interests in court. For the next two weeks, assistant attorneys general also represented the state in Division 16B. Division 16B is where judges make critical decisions about whether defendants charged with crimes should be detained before trial, or whether they should be released to the community. During the AGO's time in Division 16B, it strongly advocated for dangerous criminals to be detained and remain off the streets. The AGO also provided assistance and training to the CAO's staff during this time, so they could resume representation of the State in Division 16B.

Other assistant attorneys general appeared in associate circuit court to represent the State in preliminary hearings. Just days after beginning to assist the CAO, assistant attorneys general conducted the first three preliminary hearings in years—and prevailed in each one. A separate team of assistant attorneys general began to reinvigorate the grand jury process. These assistant attorneys general presented many cases to the grand jury, while also training staff on the mechanics of a grand jury, how to review a case for the appropriate charges, and how to best present cases to the

grand jury. These actions, together, began clearing the way for a revitalized CAO to proceed with new criminal cases.

After receiving feedback from employees at the CAO, assistant attorneys general joined the rotation for the violent crime and homicide pagers. These attorneys were on-call for warrant appli-

cations, search warrant requests, general legal questions, and requests for prosecutor attendance at homicide scenes. By joining the pager, the AGO was able to provide a break and a chance to rest to CAO employees.

Investigators and legal assistants from the Attorney General's Office also provided assistance. In the first two weeks, legal assistants from the AGO

processed dozens of cases worth of backlogged discovery, so CAO staff could produce the discovery in response to outstanding discovery requests. Investigators from the Attorney General's Office aided the CAO by locating and contacting victims and witnesses, in addition to providing necessary

criminal history information for the attorneys in Division 16B.

Throughout this process, experienced prosecutors with the Attorney General's Office served as a resource to the CAO prosecutors.

Assistant attorneys general

met with the assistant circuit attorneys who had pending trials and discussed potential evidentiary issues, legal strategies, and case theories in an effort to support and assist the CAO in its pending trials.

When Circuit Attorney Gore was sworn in on May 30, 2023, the AGO continued to provide assistance, at Circuit Attorney Gore's request, until 5:00 PM on June 2, 2023.

“**In the first two weeks, legal assistants from the AGO processed dozens of cases worth of backlogged discovery, so CAO staff could produce the discovery in response to outstanding discovery requests. Investigators from the Attorney General's Office aided the CAO by locating and contacting victims and witnesses, in addition to providing necessary criminal history information for the attorneys.**”

“**Just days after beginning to assist the CAO, assistant attorneys general conducted the first three preliminary hearings in years—and prevailed in each one.**”

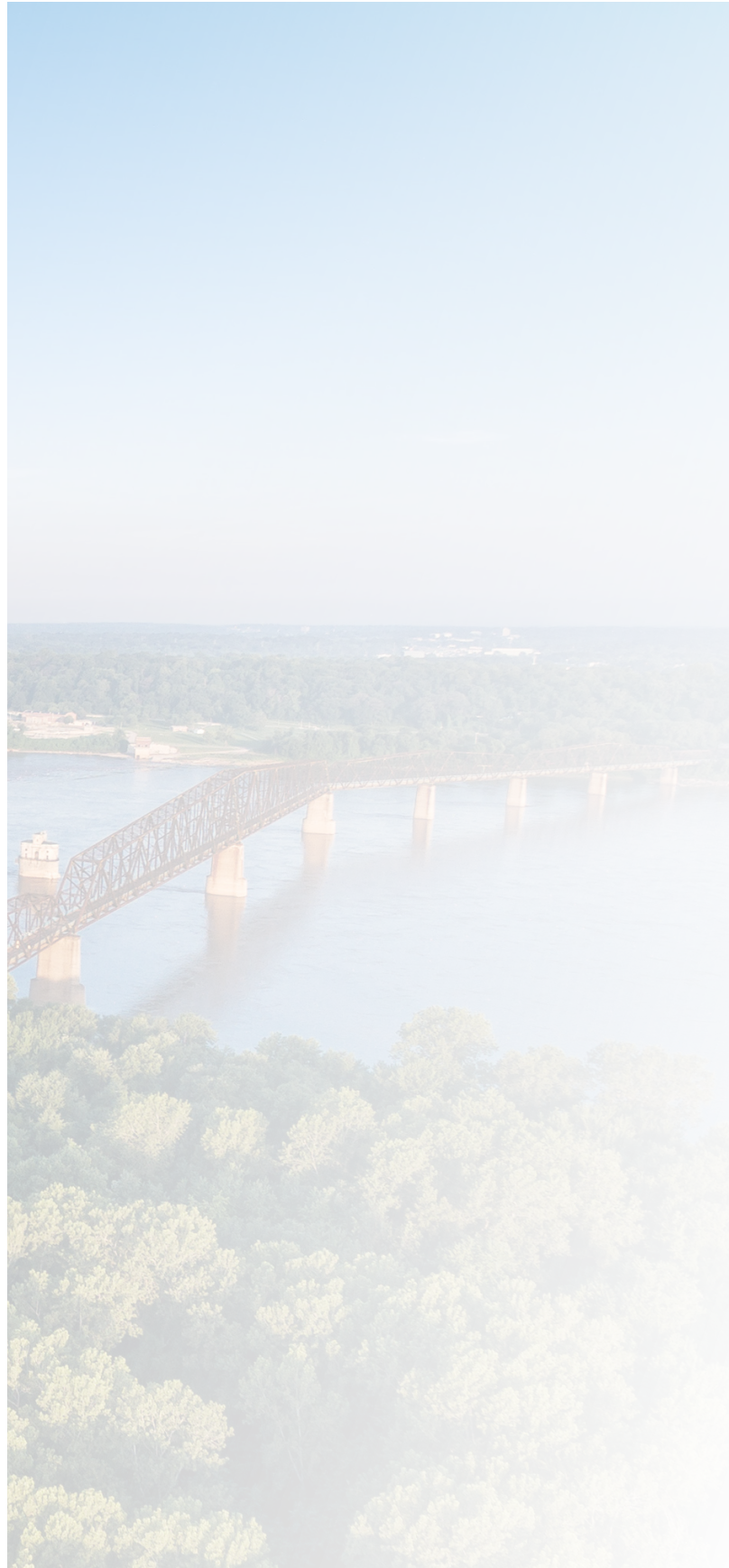
JUNE 2023***CONTINUED COOPERATION WITH
CIRCUIT ATTORNEY GORE***

In the weeks following Circuit Attorney Gore's assumption of his office, the Attorney General's Office continued to provide assistance at Circuit Attorney Gore's request. The AGO reached an agreement, at the request of Circuit Attorney Gore to provide assistance on post-conviction relief cases. The AGO agreed to handle at least 99 pending post-conviction relief cases. The AGO has already conducted several post-conviction relief hearings, and has begun work on many more post-conviction cases scheduled for court hearings in the months ahead.

“**The AGO agreed to handle at least 99 pending post-conviction relief cases. The AGO has already conducted several post-conviction relief hearings, and has begun work on many more post-conviction cases scheduled for court hearings in the months ahead.**”

The AGO quickly established a very good working relationship with Circuit Attorney Gore, and the AGO looks forward to strengthening that relationship, as Circuit Attorney Gore continues to lead that office. Circuit Attorney Gore has met a tremendous challenge head on. The AGO looks forward to working with Circuit Attorney Gore in providing justice to the City of St. Louis.

“**The AGO quickly established a very good working relationship with Circuit Attorney Gore, and the AGO looks forward to strengthening that relationship, as Circuit Attorney Gore continues to lead that office.**”



SUMMARY OF WITNESS INTERVIEWS

The AGO's investigation in these proceedings encompassed a review of thousands of documents, hundreds of court files, and dozens of interviews. The extensive allegations of Ms. Gardner's knowing failures and willful neglect are outlined in the 120-page Amended Petition in Quo Warranto that was filed on March 21, 2023, and that document should be consulted for a fuller review of the anticipated evidence that the State was preparing to present at trial. However, a full picture of the substantial harms being inflicted upon the criminal justice system, the people who work within it, and the victims of crime in the City of St. Louis, would not have been possible without the cooperation of witnesses who were willing to stand up and share their stories. A brief summary of some of their accounts is included here.

— “
... the Circuit Attorney's Office is now
in a state of near total collapse.”
—

—Former Judge Booker Shaw, Attorney for the 22nd Judicial Circuit

— “
“[Ms. Gardner] has created a toxic
work environment.”
—

—Anonymous former Assistant Circuit Attorney

— “
“This job isn't for Kim Gardner, and if
she needs help, [she should] just say it”
—

—Anonymous Victim

— “
“Our greatest fear is [Victim] will have
to endure a trial in March, yet regard-
less of solid DNA evidence, [Defendant]
will walk free. This cannot happen. Due
to all that we have experienced to date,
we have sadly lost all faith in the St.
Louis criminal justice system.”
—

—Anonymous Victim

INFORMATION LEARNED FROM: JUDGES

Over the course of the AGO's investigation, the investigative team interviewed more than ten different judges from the 22nd Judicial Circuit. During those interviews, the judges expressed a common theme: that under Ms. Gardner, the Circuit Attorney's Office was in a state of complete dysfunction.

The judges expressed dismay, disappointment, and despair over the state of the Circuit Attorney's Office, particularly with respect to the ability to resolve cases through litigation and with respect to the ability to notify victims of impending dispositions and trials.

The judges noted that they had issued many orders in different cases in order to document the failures of the circuit attorney's office under Ms. Gardner, and they noted that the AGO had cited many of those cases in its amended petition in quo warranto. The judges that were interviewed by the AGO uniformly observed that, under Ms. Gardner, the Circuit Attorney's Office was not complying with its obligations under the victim's rights statute²⁰² and the Missouri Constitution.¹⁹⁵ In an effort to combat this, some judges had begun requiring assistant circuit attorneys to complete and file documents indicating they had contacted the victims.

Some judges provided unique and specific examples of Ms. Gardner's total, willful neglect of

her duties. For instance, one judge observed that under Ms. Gardner, the Circuit Attorney's Office had "near constant turnover." **As another judge put it, "The assistant circuit attorneys are not in an environment where they can be successful."**

As a result, the office was understaffed, the attorneys were undertrained, and cases that should have been prosecuted were languishing on the docket.

The lack of fully-trained assistants, driven by Ms. Gardner's willful neglect of her duties, caused ripples through the Circuit Attorney's Office and the court system. Assistant circuit attorneys would fail to appear for court, discovery was not processed and disclosed, and assistants could not adequately prepare for trial. Each of these problems were the direct result of Ms. Gardner's willful neglect of her

duty to supervise, attract, retain, and train her assistants.

Another judge explained that the dysfunction of the office even included cases filed in associate circuit court. As that judge explained, the CAO was unable to advance cases to preliminary hearing due to high caseloads and other factors. As a result, several felony cases were dis-

missed by the court for failure to prosecute.

Other judges pointed out that, despite Missouri law to the contrary, Ms. Gardner's office was not charging defendants with armed criminal action,²⁰⁴

"The judges that were interviewed by the AGO uniformly observed that, under Ms. Gardner, the Circuit Attorney's Office was not complying with its obligations under the victim's rights statute and the Missouri Constitution."

"Other judges pointed out that, despite Missouri law to the contrary, Ms. Gardner's office was not charging defendants with armed criminal action, even when the defendant was charged with committing a felony, and where the defendant committed that felony by, with, or through the knowing use of a deadly weapon or dangerous instrument."

²⁰²§ 595.209, RSMo. (2016).

²⁰³Mo. Const. art. I, § 32.

even when the defendant was charged with committing a felony, and where the defendant committed that felony by, with, or through the knowing use of a deadly weapon or dangerous instrument.

The United States Supreme Court has specifically held that Missouri law authorizes separate punishment for the act of committing a felony by, with, or through the knowing use of a deadly weapon.²⁰⁵ Later conversations with assistant circuit attorneys confirmed that this policy directive came from Ms. Gardner and her administration.

Several judges explained that, due to understaffing and mismanagement by the senior administrative team, the assistant circuit attorneys were frequently not ready for trial. When local media began to report on this, the judges noticed that Ms. Gardner began directing her staff to force judges to enter orders dismissing cases for lack of prosecution, in an apparent effort to redirect the community's ire from Ms. Gardner to the 22nd

Judicial Circuit.

One judge explained that, after this became the practice, "It is a rare week where I don't dismiss a case for failure to prosecute." These court dismissals usually occurred after the Circuit Attorney's Office had dismissed and refiled a case several times. That practice resulted in what one judge called "a complete breakdown in the entire justice system." As a result, the circuit had to adopt an administrative rule for reassigning dismissed and refiled cases. This pattern and practice helped explain why the circuit court had dismissed 2,735 criminal cases during Ms. Gardner's tenure as Circuit Attorney.

The judges noticed that Ms. Gardner began directing her staff to force judges to enter orders dismissing cases for lack of prosecution, in an apparent effort to redirect the community's ire from Ms. Gardner to the 22nd Judicial Circuit.

That practice resulted in what one judge called "a complete breakdown in the entire justice system." As a result, the circuit had to adopt an administrative rule for reassigning dismissed and refiled cases. This pattern and practice helped explain why the circuit court had dismissed 2,735 criminal cases during Ms. Gardner's tenure as Circuit Attorney.

As one judge put it, "The assistant circuit attorneys are not in an environment where they can be successful."

²⁰⁴§ 571.015, RSMo. (2016).

²⁰⁵Missouri v. Hunter, 459 U.S. 359 (1983).

INFORMATION LEARNED FROM: THE CIRCUIT ATTORNEY'S OFFICE AND LAW ENFORCEMENT

Throughout the investigation, the Attorney General's Office interviewed a number of former employees of the Circuit Attorney's Office. **Many of the former employees expressed concern for their financial or physical safety if it was publicized that they had been interviewed by the Attorney General's Office.**

“

Members of law enforcement provided a series of personal experiences that painted the same picture: due to staffing issues and directives from Ms. Gardner, the Circuit Attorney's Office was impeding the orderly administration of justice in St. Louis City.

”

The Attorney General's Office also interviewed several members of law enforcement, including a number of officers with the St. Louis Metropolitan Police Department. Members of law enforcement provided a series of personal experiences that painted the same picture: due to staffing issues and directives from Ms. Gardner, the Circuit Attorney's Office was impeding the orderly administration of justice in St. Louis City.

In the interviews with former employees, it became clear that the dysfunction within the Circuit Attorney's Office was caused by Ms. Gardner's mismanagement. Ms. Gardner's mismanagement began during the transition—even before Ms. Gardner officially took office. For instance, some employees described being told by Ms. Gardner that there would not be changes to their job duties, but then discovered that Ms. Gardner had

changed their responsibilities when Ms. Gardner sent another employee to inform them of the change. When these employees went to speak to Ms. Gardner, she attempted to avoid meeting with them by remaining in her office with the door closed.

This became commonplace during Ms. Gardner's time in office. Several former employees reported that Ms. Gardner was not frequently seen in the Circuit Attorney's Office. And, when she was in her office, the door was usually closed.

These former employees also explained that Ms. Gardner would avoid or refuse to meet with staff members to hear their concerns. One former employee explained that Ms. Gardner was openly distrustful of employees who had been hired by the prior administration, and that her distrust of such employees was obvious. Another former employee pointed out that it appeared that Ms. Gardner had selected favored employees, and that these employees received special treatment that was denied to other, similarly situated employees. **Meanwhile, a former employee reported that Ms. Gardner would “yell at assistant circuit attorneys” while in the office.**

“

Ms. Gardner would avoid or refuse to meet with staff members to hear their concerns. One former employee explained that Ms. Gardner was openly distrustful of employees who had been hired by the prior administration, and that her distrust of such employees was obvious.

”

Ms. Gardner's mismanagement was compounded by the fact that, as one former employee put it, "[Ms. Gardner] did not fully understand what assistant circuit attorneys do" at work. After becoming Circuit Attorney, Ms. Gardner began to assert more and more control over the day-to-day functioning of the office, including, for example, requiring that all plea offers be personally approved by Ms. Gardner. Despite imposing this requirement on her employees, Ms. Gardner was difficult to reach, and often would not approve—or even respond to—proposed plea offers.

Simultaneously, Ms. Gardner was degrading the autonomy of the assistant circuit attorneys and the authority and number of supervisors. As a result, employees of the circuit attorney's office had less authority to act, fewer people to whom they could turn to authorize actions, and increasing and untenable caseloads. Several former employees told the AGO during their interviews that, due to high turnover and Ms. Gardner's willful neglect of her duties, caseloads at the Circuit Attorney's Office had skyrocketed.

All of this had a profound impact on the employees at the Circuit Attorney's Office. **One former employee revealed that it was common for assistant circuit attorneys to have "breakdowns" and to cry in the office from the overwhelming stress.** Former employees explained how their dream was to become a prosecuting attorney, but after even a short time at the Circuit Attorney's Office, they left criminal law practice entirely.

Several former employees recounted how they were excited when Ms. Gardner was initially elected because they agreed—to varying degrees—with her "reform" message. But those same former em-

ployees described a complete disillusionment with the Circuit Attorney's Office once Ms. Gardner became Circuit Attorney due to Ms. Gardner's total failure to properly manage the office.

The AGO's interviews with law enforcement revealed a strained, and in many ways, broken relationship between the Circuit Attorney's Office and local law enforcement. The interviewed members

“Ms. Gardner's mismanagement was compounded by the fact that, as one former employee put it, “[Ms. Gardner] did not fully understand what assistant circuit attorneys do” at work.

of St. Louis Metropolitan Police Department nearly universally pointed out that the Circuit Attorney's Office was less able to timely file criminal charges when it eliminated in-person warrant applications and instead required emailed applications. The in-person warrant application process allowed for local prosecutors to judge the credibility and demeanor of witnesses and victims, and it allowed them to provide grand jury subpoenas directly to those witnesses and victims. The elimination of the in-person warrant application frustrated those goals and resulted in a much lower standard of service to the City of St. Louis.

“The AGO's interviews with law enforcement revealed a strained, and in many ways, broken relationship between the Circuit Attorney's Office and local law enforcement.

Members of law enforcement also reported that the Circuit Attorney's Office would frequently decline to issue charges by requesting additional police follow up. But when that follow up had been completed, the Circuit Attorney's Office would decline to act on the case. This was deeply frustrating to law enforcement as the process consumed precious resources, time, and effort, but did not result in charges from the Circuit Attorney's Office.

Officers also identified the impact that Ms. Gardner's willful neglect had on the effectiveness and the morale of the police force. One officer explained that they put their “life into these cases and then no one cares.” Other officers echoed

this sentiment, explaining that the lack of staffing caused by Ms. Gardner's willful neglect of her duties meant that the assistant circuit attorneys had insufficient time—or no time—for pre-trial preparation with law enforcement. That, in turn, led to things like being unprepared for direct examination, handing the officers the wrong piece of evidence when trying to lay foundation, and asking officers to explain the cases to the prosecutor just days before trial.

The impact of Ms. Gardner's willful neglect of

her duties was not limited to members of her staff and the police. Officers reported that, under Ms.

“Officers cited dismissals and refilings on the day of trial; a fear in witnesses that even if they cooperated, the Circuit Attorney's Office could not hold the defendant accountable; and a lack of witness protection resources as contributing to the community's lack of faith.”

Gardner, witness cooperation and involvement had “gotten worse” due to a lack of trust in the office from the community. Officers cited dismissals and refilings on the day of trial; a fear in witnesses that even if they cooperated, the Circuit Attorney's Office could not hold the de-

fendant accountable; and a lack of witness protection resources as contributing to the community's lack of faith.



INFORMATION LEARNED FROM: VICTIMS

The Attorney General's Office interviewed many victims of crimes in the City of St. Louis.²⁰⁶ Their accounts showed that Ms. Gardner was failing to comply with her statutory and constitutional duties toward victims.

Some victims reported that they would receive an initial communication or intermittent communication from the CAO, but that they then stopped receiving other important communications about court dates, bond hearings, dismissal of their cases, plea negotiations or plea agreements, the final disposition of their cases, or the release of the defendant from custody. **Other victims said that they never received any communication at all, and that they only learned about charges being filed or other events, such as the dismissal of the charges, from other sources, such as the media.**

For instance, one victim, whose son and granddaughter were shot and killed, was initially told by a victim advocate about some upcoming court dates. However, she was then left to her own devices, and she had to figure out dates by herself. She would call the CAO, but the people she talked to were dismissive. On one occasion, she went to court, and the ACA who was representing the State did not seem to know what was going on, and the defense attorney was "eating him alive." After the petition in quo warranto was filed, she contacted the AGO because she did not believe that Ms. Gardner was

helping her family in court. Although she had been supportive of Ms. Gardner, she believed that Ms. Gardner was acting politically instead of helping victims. She described how someone from the office called her and asked her to have her family "on

standby," meaning that the office wanted her to stand behind Ms. Gardner at a press conference to make Ms. Gardner look good. The victim refused. The victim believed that Ms. Gardner was not right for the job, and she felt that her wounds could

not heal because she did not know what was going on.

One mother of a murder victim reported that no one ever reached out to her about court dates, so she watched Missouri Case.net to see when court dates were scheduled. She always showed up for court, but sometimes the date would get canceled, and no one would tell her. Usually, no victim advocate was present in court. No one ever told her that the murder case was going to be dismissed. She was only told about the dismissal after the fact.

Another victim, whose fiancé was murdered, was initially contacted by a victim advocate. However, as the case progressed, the victim had to follow up with police officers to figure out

what was going on. The victim was never notified that the defendant had been released on house arrest, and she was never notified of a bond hearing. When she became aware that the defendant was

“She described how someone from the office called her and asked her to have her family “on standby,” meaning that the office wanted her to stand behind Ms. Gardner at a press conference to make Ms. Gardner look good. The victim refused.”

“Usually, no victim advocate was present in court. No one ever told her that the murder case was going to be dismissed. She was only told about the dismissal after the fact.”

²⁰⁶This report uses the term “victim” to refer to anyone who meets the definitions in Missouri law. § 595.209, RSMo. (2016).

violating the conditions of his bond, she reported the violations to the CAO, but no action was taken. **When the victim and another family member flew in from another state for trial at their own expense, they learned that the trial would not take place. No one had told them anything.**

Another victim who had three family members murdered described how his mother was having a really hard time and needed closure. He said that only a detective had ever made contact with him and that he had learned about the charges from the detective. The CAO never contacted him about bond hearings, and he never received any communication from the CAO.

The parents of another violent crime victim described their concern that the charges were not serious enough. They received some encouraging words from one ACA, but they said that the ACA was overwhelmed. On one occasion, they showed up for court, but no one from the CAO came to court. Victim services did not call them until a week after the court date.

One victim complained that the warrant office failed to review new cases. She said that she finally posted camera footage of the defendant harassing her family on TikTok, which gained media attention. After that, the CAO finally reviewed and charged the case.

The mother of a sexual assault victim reported that she was not notified of bond hearings or the status of the case. She resorted to contacting the mayor's office in an effort to obtain information from the CAO, and she endured significant stress and anxiety due to prosecutorial turnover and lack of preparedness. On one occasion, she witnessed an ACA discussing sensitive facts of case flippantly in open court with a defense attorney.

The family of yet another murder victim reported that they received no communication from the CAO regarding the defendant's filing of a post-conviction relief motion until the last moment. That family explained that, after enduring a difficult court hearing and putting

considerable pressure on the office, they finally received a meeting with Ms. Gardner and her senior staff. The family explained that the meeting did not provide much information, and that they were shocked to learn at a subsequent court date that the CAO was dismissing charges against the defendant. Rather than focus the conversation on the murder victim, the CAO staff primarily focused on alleged difficulties that the defendant endured while in prison. This family felt completely disrespected by Ms. Gardner and the CAO.

“
Another victim who had three family members murdered described how his mother was having a really hard time and needed closure. He said that only a detective had ever made contact with him and that he had learned about the charges from the detective. The CAO never contacted him about bond hearings, and he never received any communication from the CAO.
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OBSERVATIONS AND RECOMMENDATIONS

Following the Attorney General's extensive investigation and litigation of the Amended Petition in Quo Warranto, the Attorney General makes several observations and recommendations.

A. Ms. Gardner's delay tactics threatened to defeat the purpose of the writ and left many unanswered questions.

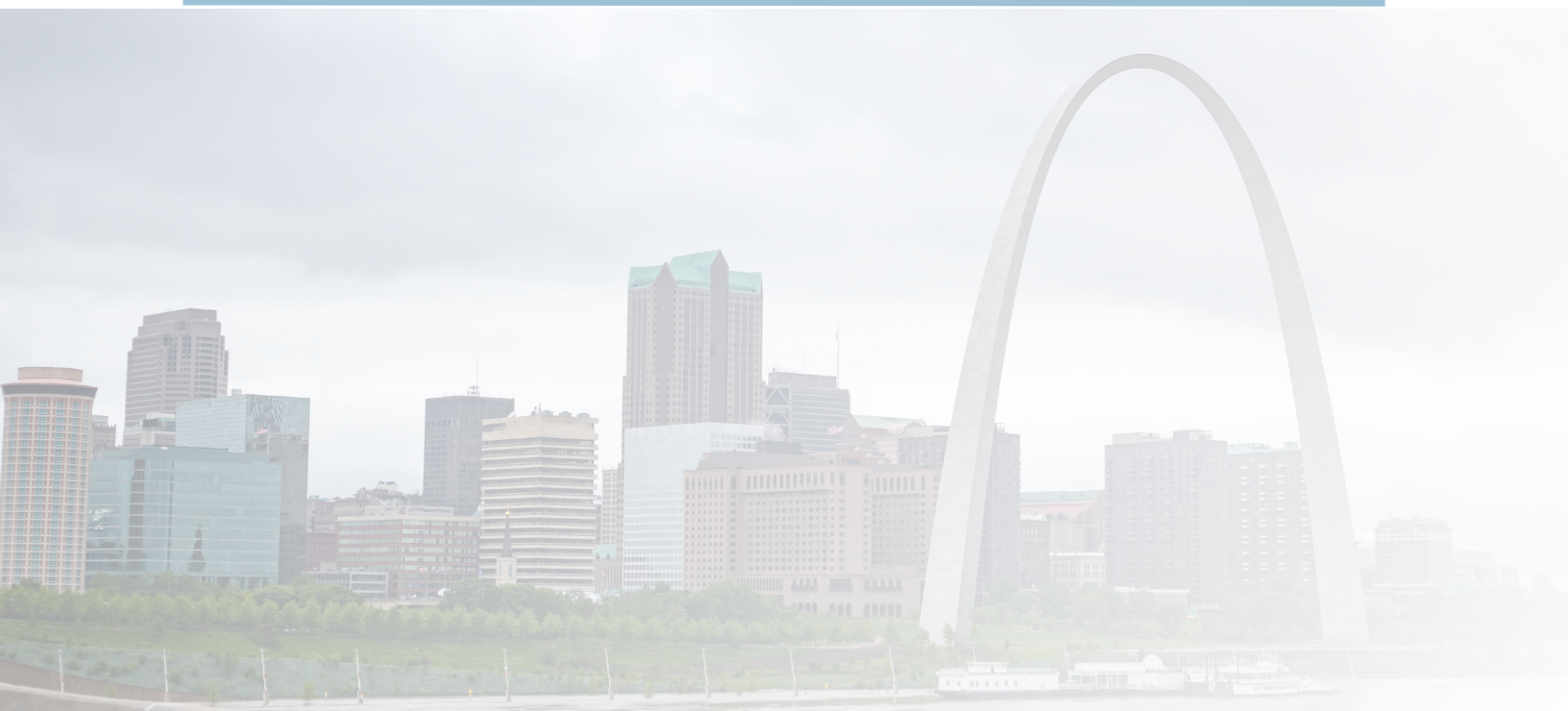
B. Our statutes do not protect the public against usurpers who may seek public office again in the future

C. Ms. Gardner's pursuit of an advanced nursing degree while holding the office of Circuit Attorney demonstrated a lack of accountability under the law.

D. The Office of the Circuit Attorney is a law enforcement agency first, and it must be primarily concerned with preserving public safety.

E. Ms. Gardner failed to effectively manage staffing in her office and she failed to provide adequate training for her staff.

F. Section 595.209 does not extend victim's rights to post-conviction relief proceedings.



A. Ms. Gardner's delay tactics threatened to defeat the purpose of the writ and left many unanswered questions.

By its very nature, a petition in quo warranto should be resolved with some degree of urgency.

A term of office has a definite end, and an office holder should not be able to retain a forfeited office through the artifice of delay. Moreover, as our courts have recognized, the purpose of proceedings in quo warranto is to "protect[] the public against usurpers."²⁰⁷ The need for protecting the public is particularly important when dealing with a prosecutor. If a prosecutor is not a usurper, he or she should be permitted to return to his or her duties as quickly as possible for the sake of public safety; but if a prosecutor is a usurper, he or she should not hold that office even one day longer than is necessary to resolve the quo warranto proceedings.

Here, Ms. Gardner engaged in tactics that were designed to delay the case. For instance, in addition to objecting to every discovery request made of her, Ms. Gardner also objected to every discovery request made of the CAO and its current and former employees. Ms. Gardner and her office sought to delay any discovery until other motions had been resolved,

and the attorneys representing the CAO showed up unprepared for argument on the CAO's own pending motion. As a result, at the time that Ms. Gardner resigned—nearly three months into the case—neither Ms. Gardner nor the CAO had provided a single page of discovery. Ms. Gardner's universal resistance to discovery stood in contrast to the production made, or offered, by multiple other non-parties.

“As a result, a the time that Ms. Gardner resigned—nearly three months into the case—neither Ms. Gardner nor the CAO had provided a single page of discovery.”

As a general matter, of course, a civil litigant can object to discovery. But in quo warranto actions against a prosecutor, it is apparent that some objections should not be entertained. For instance,

although the criminal case files held by the Circuit Attorney's office are the State's files (inasmuch as the Circuit Attorney is merely the State's attorney in those criminal cases), the State was precluded from accessing and reviewing its files during the quo warranto proceedings. This made it difficult

“Again, these are ordinary actions in most civil cases; however, in quo warranto proceedings—where any undue delay can defeat the purpose of the writ—such procedures should be curtailed.”

to further investigate Ms. Gardner's conduct in office, and it left unanswered questions. Any subsequent Attorney General who is called upon to bring such an action against a prosecutor should press this point.

Ms. Gardner also filed a motion to dismiss the amended petition in quo warranto and, after waiting fifty-nine days (as permitted by the civil rules of procedure), she filed a motion for change of judge. Again, these are ordinary actions in most civil cases; however, in quo warranto proceedings—where

²⁰⁷*State ex inf. Peach ex rel. Stitz v. Perry*, 643 SW.2d 878, 880 (Mo. App. E.D. 1982).

any undue delay can defeat the purpose of the writ—such procedures should be curtailed.

One issue that can contribute to delay is the general applicability of the Civil Rules of Procedure. Rule 98.01 states, “Proceedings in quo warranto in a circuit court shall be as prescribed in this Rule 98” The rule further provides that “[i]n all particulars not provided for by the foregoing provisions,

proceedings in quo warranto shall be governed by and conform to the rules of civil procedure and the existing rules of general law upon the subject and

the court may, by order, direct the form of such further details of procedure as may be necessary to the orderly course of the action or to give effect to the remedy.” Thus, while a circuit court has some discretion to direct “further details of procedure,” the general applicability of the civil rules will often permit litigants to employ litigation tactics that prolong the proceedings (e.g., a motion to dismiss, motion for summary judgment, appeal from

the grant or denial of summary judgment, etc.).

Recognizing that some procedures can also be

used to shorten litigation, Rule 98 could be amended to include additional language related to time limits (e.g., a limited timeframe for seeking a change of judge), or it could be amended to include express language similar to language found in Rules 84.24(e) and 84.24(i), such as, “When-

ever in the judgment of the court any rule of civil procedure or any time limit would defeat the purpose of the writ, the court may dispense with

or shorten such time limit or dispense with such portion of the rule as is necessary in the interest of justice.” To facilitate discovery of a prosecutor’s criminal files, the General Assembly could, if prompted by the will of the people, consid-

er amending Chapter 531 to include a provision expressly granting the Attorney General access to the State’s files upon the filing of a petition in quo warranto.

“ Recognizing that some procedures can also be used to shorten litigation, Rule 98 could be amended to include additional language related to time limits, or it could be amended to include express language similar to language found in Rules 84.24(e) and 84.24(i),

“ To facilitate discovery of a prosecutor’s criminal files, the General Assembly could, if prompted by the will of the people, consider amending Chapter 531 to include a provision expressly granting the Attorney General access to the State’s files upon the filing of a petition in quo warranto.

B. Our statutes do not protect the public against usurpers who may seek public office again in the future.

The outcome of the quo proceedings was satisfactory because Ms. Gardner was forced to resign from the office that she had forfeited through the willful neglect of her duties. However, there is nothing in our statutes that would prevent Ms. Gardner from seeking, and obtaining, the office of

Circuit Attorney again in the future.

Of course, inasmuch as “all political power is vested in and derived from the people;”²⁰⁸ that possibility may be a risk that the people are willing to live with. On the other hand, if prompted by the will of the people, the General Assembly could amend our laws to render a person ineligible to run for a particular public office after being removed from that particular office by quo warranto or after resigning from that particular office during the pendency of quo warranto proceedings.

C. Ms. Gardner's pursuit of an advanced nursing degree while holding the office of Circuit Attorney demonstrated a lack of accountability under the law.

In the weeks leading up to the Circuit Attorney's abrupt resignation, the State uncovered evidence that Ms. Gardner was not devoting her “entire time and energy to the discharge of [her] official duties[.]”²⁰⁹ Instead, from August 2021 until the time of her resignation, she was seeking an advanced nursing degree and working at a clinic, including time during regular work hours. And during that time, she was paid by the taxpayer nearly \$300,000. Because she abruptly resigned before proof of her dereliction of duty could be produced in discovery, it is unknown exactly how much time and energy Ms. Gardner diverted from her official duties to her personal pursuits.

But any amount of time and energy that she diverted was inexcusable. Ms. Gardner took an oath “to faithfully demean [herself] in office,”²¹⁰ and it should have gone without saying that she would fulfil the basic duty of devoting her time and energy to the work of her office. The people deserve that much, and the General Assembly could amend § 56.445 to require the Circuit Attorney to attest, under penalty of perjury, that the Circuit Attorney will comply with the provisions of § 56.445.

“But any amount of time and energy that she diverted was inexcusable. Ms. Gardner took an oath “to faithfully demean [herself] in office,” and it should have gone without saying that she would fulfil the basic duty of devoting her time and energy to the work of her office. The people deserve that much.

²⁰⁸Art. I, section 1, Mo. Const.

²⁰⁹§ 56.445, RSMo. 2016.

²¹⁰§ 56.550, RSMo. 2016.

D. The Office of the Circuit Attorney is a law enforcement agency first, and it must be primarily concerned with preserving public safety.

Ms. Gardner's partnership with the Vera Institute, with the aim of "actively shrinking the criminal legal system's footprint,"²¹⁰ was a disastrous experiment, and it unmoored the office from sound law enforcement practices. The Vera Institute is a far-left advocacy organization dedicated to broad and nebulous goals such as moving away from "case-by-case" prosecutorial discretion (deemed to be a "narrow view of justice"), choosing instead to focus on "systemic impact of case decisions."²¹²

In reality, ill-defined goals of reducing "mass incarceration" appear to be little more than a 'fig leaf' to simply reduce prosecutions – even for felony crimes.²¹³ The Vera Institute's method for prosecuting fewer criminals centered on convincing prosecutors in the CAO to neglect core duties in the areas of charging, bail, plea offers and sentencing.²¹⁴

The investigation of the quo warranto proceedings revealed some of the resulting systemic problems in Ms. Gardner's office. The Circuit Attorney's

Office adopted policies and practices that greatly decreased the number of offenses being charged and prosecuted. The office identified classes of "low level" crimes that it refused to prosecute altogether, losing sight of the reality that supposed "low level" crimes are often committed by individuals who will also commit more serious and violent crimes if left to their own devices.²¹⁵ The office imposed a blanket refusal to accept cases from some officers and fell into patterns of also refusing cases due to a purported lack of sufficient evi-

dence, of failing to review new applications at all, and of dismissing cases that it was unprepared to prosecute.²¹⁶

One particular area where the Vera Institute's vision for "reducing the footprint" of the criminal justice system was

especially damaging was in coordinating with the CAO's office to drop consideration of "taken under advisement" or TUA cases on the grounds that such delayed prosecutions created "confusion and injustice" for individuals arrested on probable cause of having committed crimes. "To remedy this practice, based on Vera's review and recommendations, CAO dismissed approximately 25,000 pending TUA cases..."²¹⁷ Sadly, this drive to create "resolution" for those arrested had no corollary in finding such resolution for the actual victims of their crimes, thousands of which saw the cases against their victimizers dismissed by the CAO.²¹⁸

“Ms. Gardner's partnership with the Vera Institute, with the aim of “actively shrinking the criminal legal system's footprint,” was a disastrous experiment, and it unmoored the office from sound law enforcement practices.”

²¹¹Akhi Johnson & Stephen Roberts, *Reshaping Prosecution in St. Louis: Lessons from the Field*. New York: Vera Institute of Justice, 2020.

²¹²*Id.*

²¹³*Id.*

²¹⁴*Id.*

²¹⁵*Id.*

²¹⁶Such refusals would have increased after the "CAO adopted the higher 'beyond a reasonable doubt' standard at initial charging" instead of the lower "probable cause" standard that is required to charge. See *id.*

²¹⁷*Id.*

²¹⁸*Id.*

In fact, the Vera Institute pushed the CAO to reject cases where the “beyond reasonable doubt” standard could not be met – even at the pre-indictment phase where investigations were nowhere near complete. Remarkably, the CAO adopted this misguided practice, short-circuiting its own investigative prerogative in a rush to lower prosecution rates in order to meet the political goals of Ms. Gardner.²¹⁹

“**In fact, the Vera Institute pushed the CAO to reject cases where the “beyond reasonable doubt” standard could not be met – even at the pre-indictment phase where investigations were nowhere near complete.**”

The Vera Institute and the CAO’s coordinated mass produced approach to crime, including violent crime and felonies, had the desired effect of dramatically reducing prosecutions. In fact, the Vera Institute bragged that the CAO increased its refusal rate to prosecute felony charges from an alarmingly high baseline of 49% in 2016 to an even higher 55% by 2019 (non-prosecutions of misdemeanors spiked to two-thirds). In its report, the Vera Institute further touted the success of being able to “shrink the footprint” of the criminal justice system as if police and prosecutors are a social evil and criminal activities are a social good.²¹⁹

“**In its report, the Vera Institute further touted the success of being able to “shrink the footprint” of the criminal justice system as if police and prosecutors are a social evil and criminal activities are a social good.**”

Part and parcel of this precipitous drop in criminal prosecutions was a drive to encourage judges to not issue bench warrants, instead relying on summonses and sending accused felons to diversion programs. While quick to claim credit for how many individuals “successfully complete” such

programs, the metrics of what completion entails remain vague.²²¹ Tragically, by the only measure of what actually counts to the residents of St. Louis (a reduction in the victimization of innocent citizens), the program was a dismal failure. It is worth noting that a young teenager visiting St. Louis on the night of February 18, 2023 was critically injured by an accused felon out on a bond.²²²

In interviews with local law enforcement officers, it was clear that the officers felt disrespected and neglected by the Circuit Attorney’s Office. A good working relationship with law enforcement officers is critical to the successful administration of justice. Those officers act as witnesses, they often perform additional investigation at the request of the prosecutor, and they are critical in helping the prosecutor’s office establish witness and victim cooperation.

When the office closed the in-person warrant office, the office became far less responsive, and it eliminated a critical point in the office’s ability to interact with the criminal justice system. An in-person warrant office provides an early opportunity for law enforcement officers and the CAO to judge the credibility of witnesses and victims. It is the office’s first opportunity to begin the sometimes difficult task of forging a relationship of trust with victims, which is especially critical in domestic violence, sexual assault, and homicide cases. It

²¹⁹*Id.*

²²⁰*Id.*

²²¹*Id.*

²²²*Id.*

also provides an excellent opportunity for prosecutors to identify and suggest additional avenues of investigation, as well as to provide victims and witnesses with grand jury dates and subpoenas.

In the forward to the Vera Institute's report on "Reshaping Prosecution in St. Louis: Lessons from the Field", Ms. Gardner wrote about her goal to reorient the CAO to center

on racial equity. *"In 2017, I knew addressing an issue of this scale would require a new approach centered on accountability and racial equity. That's why my office partnered with the Vera Institute of Justice's Reshaping Prosecution program to shrink the system and instigate transformational change in St. Louis."*²²³

As part of Ms. Gardner's overall practice of catering to the optics of prosecution, while largely neglecting the actual duties of the elected prosecutor, along with the Vera Institute, she aggressively sought to "address racial and ethnic disparities within the system."²²⁴ While the stated aim of decreasing racial disparity by a certain percentage may seem laudable, people are not numbers and, in practice, the effective management of the criminal justice system cannot be driven by artificial quotas.

In short, Ms. Gardner lost sight of the fact that the Circuit Attorney's Office is a law enforcement agency. One of her principle duties is to "manage and conduct all criminal cases" in the City of St. Louis.²²⁵ The Circuit Attorney certainly has discretion to charge or not charge a given case, but that discretion must be exercised in "good faith."²²⁶ In other words, a Circuit Attorney may not exercise

"arbitrary discretion" because such purported use of a prosecutor's discretion "is not usable as a refuge for unfaithful prosecuting attorneys."²²⁷

Nor may a Circuit Attorney be unlawfully influenced by third parties in charging any person with an offense. "It is unlawful for the circuit attorneys or the assistant circuit attorneys . . . to contract

for, directly or indirectly, or to accept, receive or take any fee, reward, promise, or undertaking, or gift or valuable thing of any kind whatsoever . . . for aiding, advising, promoting or procuring any indictment, true bill or legal process of any kind whatsoever against any person or party, or for aiding, promoting, counseling or procuring the detection,

discovery, apprehension, prosecution or conviction of any person upon any charge whatsoever . . ."²²⁸

Likewise, it would seem equally important that the Circuit Attorney not be unlawfully influenced in deciding not to charge a person. Here, it appears that the degree of influence that the Vera Institute wielded over Ms. Gardner, in support of her endeavors in office, may have influenced decisions not to charge various offenses in the city. The law does not specifically address decisions not to charge offenses,²²⁹ but that is a circumstance that could be considered and dealt with by the General Assembly, to ensure that a prosecutor's discretion is not unlawfully usurped by an outside third party. Every decision not to charge an offense—particularly when supported by sufficient evidence—is a decision that undermines public safety and, potentially, the trust that the people have in the criminal justice system.

In short, Ms. Gardner lost sight of the fact that the Circuit Attorney's Office is a law enforcement agency. One of her principle duties is to "manage and conduct all criminal cases" in the City of St. Louis. The Circuit Attorney certainly has discretion to charge or not charge a given case, but that discretion must be exercised in "good faith."

²²³*Id.*

²²⁴*Id.*

²²⁵§ 56.450, RSMo. 2016.

²²⁶State ex inf. McKittrick v. Wymore, 132

S.W.2d 979, 986 (Mo. 1939).

²²⁷*Id.*

²²⁸§ 56.380, RSMo. 2016.

²²⁹See *Id.*

E. Ms. Gardner failed to effectively manage staffing in her office and she failed to provide adequate training for her staff.

Ms. Gardner created a toxic office environment, and by the time she resigned from office, only a small number of people remained to conduct the work of the office. Leading up to her departure, workloads had become untenable, attorneys were suffering from extreme stress and resultant medical issues, and cases were not being prosecuted. Many cases were dismissed for failure to prosecute; many cases could not proceed due to persistent failures by the CAO to provide discovery; and, as these failures continued to mount, Ms. Gardner began to face charges of contempt for failing to even appear at scheduled court appearances. In short, as former Judge Booker Shaw, stated during the quo warranto proceedings, “the Circuit Attorney’s Office [was] now in a state of near total collapse.”

A significant problem that only exacerbated the staffing issues was Ms. Gardner’s failure to provide adequate oversight and training for her staff. As the Circuit Attorney, Ms. Gardner had a duty to “ensure that subordinate lawyers comply with all their legal and ethical obligations.”²³⁰

Missouri’s Rules of Professional Conduct require lawyers to “act with reasonable diligence and

promptness in representing a client.”²³¹ Lawyers must comply with court deadlines and a lawyer’s “work load must be controlled so that each matter can be handled competently.”²³² In discovery, prosecutors have a special responsibility to “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, dis-

close to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor. . .”²³³

Prosecutors are not without resources to assist in providing training to their attorneys and staff. For instance, the Missouri Office of Prosecution Services (MOPS) is a valuable resource that pulls local prosecutors together from across Missouri

and provides numerous training opportunities. MOPS was established by the General Assembly in 1981,²³⁴ and one of the statutory goals of MOPS is the “promotion of and assistance in the training of prosecuting attorneys and circuit attorney on a statewide basis.”²³⁵ As a result, MOPS offers several trainings throughout the year, including a child sexual abuse trial school, a general trial school, an annual conference on family and sexual violence, trainings on cross examination, a prosecutor boot camp, and advance trial schools.²³⁶ Training in these areas was woefully inadequate during Ms. Gardner’s time in office.

“Ms. Gardner created a toxic office environment, and by the time she resigned from office, only a small number of people remained to conduct the work of the office. Leading up to her departure, workloads had become untenable, attorneys were suffering from extreme stress and resultant medical issues, and cases were not being prosecuted.”

²³⁰ABA Comm. Ethics & Prof’l Responsibility, Formal Op. 09-454.

²³¹Rule 4-1.3.

²³²Rule 4-1.3, Cmt. [2]

²³³Rule 4-3.8(d).

²³⁴§ 56.750, RSMo. (2016).

²³⁵§ 56.750(3), RSMo. (2016).

²³⁶See, e.g., https://www.prosecutors.mo.gov/calendar_list.asp

F. Section 595.209 does not extend victim's rights to post-conviction relief proceedings.

During the AGO's investigation, the AGO heard from many victims that they did not receive adequate victim's services from the CAO. This lack of services affected other aspects of the criminal justice system, including the courts and local law enforcement, both of whom indicated that the lack of victim services was obvious and detrimental. Ensuring frequent contact with victims and their families is critical to preserving victim participation in the criminal justice system, and the CAO failed to maintain a sufficient number of victim advocates for the number of cases that arise in the City of St. Louis.

Significantly, several victims came forward to disclose the absolute failure of the CAO to inform them of important events in post-conviction relief proceedings. In one such case, after the defendant was granted a new trial in his post-conviction case, the CAO then immediately dismissed the criminal charges without first advising the victims. The AGO

was unable to include this failure as a count within the amended petition for quo warranto because the Victim's Rights Act—§ 595.209—does not extend a victim's rights to post-conviction relief proceedings.²³⁷

A post-conviction relief proceeding is an opportunity for a defendant to allege failures of their previous counsel, and it can result in a new trial or a decrease in a defendant's sentence.²³⁸ The State is represented by the local prosecutor's office in these proceedings.²³⁹

“ Given the potential harm to victims when they are not kept informed of important events related to their cases, the General Assembly should address this issue by amending the Victim's Rights Act to extend victim's rights to post-conviction relief proceedings. ”

The Victim's Rights Act requires notice of “the filing of charges, preliminary hearing dates, trial dates, continuances and the final disposition of the case.”²⁴⁰ The Act also provides the right to notice—by the Attorney General—of “case status information throughout the appellate process of their cases.”²⁴¹ But the Act

is silent as to post-conviction relief proceedings. Given the potential harm to victims when they are not kept informed of important events related to their cases, the General Assembly should address this issue by amending the Victim's Rights Act to extend victim's rights to post-conviction relief proceedings.

²³⁷See § 595.209, RSMo. 2016.

²³⁸Rule 24.035; Rule 29.15.

²³⁹*Id.*

²⁴⁰§ 595.209.1(3), RSMo. (2016).

²⁴¹§ 595.209.1(16), RSMo. (2016).

CONCLUSION

The aim of this report has been to document and make public the investigation and proceedings in quo warranto that were brought against the St. Louis City Circuit Attorney. Under our Missouri Constitution, “all political power is vested in and derived from the people;”²⁴² accordingly, the people of Missouri have a right to know what transpired in these proceedings.

A petition in quo warranto is an extraordinary remedy that should be brought only in extraordinary circumstances. Ms. Gardner’s knowing and willful dereliction of her duties presented such circumstances, and, being entrusted by the people with the authority and duty to act, Attorney General Bailey took appropriate action to remove a usurper from office.

Ultimately, the proceedings resulted in Ms. Gardner’s resignation, but not before a court reviewed the charges that had been brought against her and found that several of those charges “sufficiently state[d] claims for removal under § 106.220.” It is the hope that the investigation, litigation, observations, and recommendations summarized in this report will help the people of St. Louis and the State of Missouri understand the profound and willful failures of the former Circuit Attorney, Kimberly Gardner, and that such understanding will aid in preventing such a ruinous situation from arising again in the future.

²⁴²Art. I, section 1, Mo. Const.